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



U.S. Citizenship
and Immigration
Services

DATE: **APR 06 2015**

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)

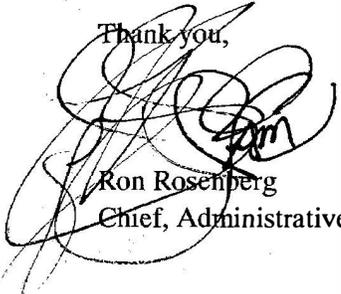
ON BEHALF OF PETITIONER:

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 541-employee "On-campus student housing management" company, established in [REDACTED]. In order to employ the beneficiary in a position it designates as an "Assistant Director for Resident Life" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the petitioner had not provided evidence sufficient to establish that the proffered position is a specialty occupation.

The record of proceeding before this office includes the following: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, counsel's brief and previously submitted documentation.

Upon review of the entire record of proceeding, we find that the petitioner has failed to overcome the director's grounds for denying this petition.¹ Accordingly, the appeal will be dismissed and the petition will remain denied.

I. STATUTORY AND REGULATORY FRAMEWORK

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

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

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

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

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

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

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or

higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

II. FACTS AND PROCEDURAL HISTORY

The petitioner identified the proffered position as an "Assistant Director for Resident Life" on the Form I-129, and attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Lodging Managers," SOC (ONET/OES) Code 11-9081, at a Level I (entry-level) wage.² The LCA was certified on March 25, 2014, for a validity period from September 15, 2014 to September 14, 2017.

The petitioner identified its industry according to the North American Industry Classification System (NAICS) Code as 611310, "Colleges, Universities, and Professional Schools." See U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "611310 Colleges, Universities, and Professional Schools," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Mar. 27, 2015).³

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 The NAICS code "611310" identifies this U.S. industry as an industry that comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods As the petitioner is not in the

In the petitioner's letter in support of the petition, dated March 31, 2014, the petitioner stated that it "was established to provide consulting and management services for on-campus student housing developed by [REDACTED] and/or owned by non-profits such as colleges, universities, and foundations." The petitioner noted that it "currently assists a total of twenty-five colleges and universities nationwide with their housing programs" and that it "recruits and employs housing professionals who are experienced in student development, enrollment management, student affairs, business affairs and auxiliary services."

The petitioner described the proffered position as the "Assistant Director for Resident Life ('Assistant Director')," "located at [REDACTED] a student housing community in the vicinity of [REDACTED] campus."⁴ The petitioner provided the following overview of the duties and educational requirements for the proffered position:

The Assistant Director assists the Director in the overall management and development of the student housing community. The Assistant Director is responsible for creating and maintaining a safe and supportive student community that meets the needs of all [REDACTED] residents with special attention to the diverse needs of its international and domestic student groups. The Assistant Director collaborates with [REDACTED] in selecting six to nine students for Resident Assistants. Weekly staff meetings and/or one-on-one meetings are held to evaluate and provide the Resident Assistants direction in their planning, promotion and execution of social and educational programs. The Assistant Director serves as a positive role model for students and provides appropriate counseling and intervention should there be conflicts or any crisis involving the students and/or staff. The duties include enforcing housing policies and adjudicating any violations of its policies. A minimum of a Bachelor's level college degree and two years of demonstrated leadership experience is required.

The petitioner also submitted a position description for the proffered position. The position description detailed the essential duties and responsibilities of the position as follows:

General Responsibilities

- Assist Director in overall management and planning.

business of "furnishing academic courses and granting degrees at baccalaureate or graduate levels," a more appropriate NAICS code might have been "721310 Rooming and Boarding Houses" which is an industry primarily engaged in operating rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off-campus dormitories that offer temporary or longer-term accommodations which for the period of occupancy may serve as a principal residence.

⁴ We observe that the petitioner indicated that the proffered position in this matter is located "in the vicinity of" [REDACTED] and thus is not on campus.

- Work to develop a sense of community among all residents.
- Development & maintain positive relationships with [REDACTED] residents.
- Help international students to adjust to life in a different country and to their academic program at [REDACTED]
- Communicate clearly and frequently with residents regarding Health and Safety inspections, Resident Assistant programs, and other updates.
- Work to establish a strong working relationship with campus partners through regular interaction and collaborative projects.

Administrative Responsibilities

- Monitors budget lines such as: programming student staff development, and community council.
- Checks and replies to office email and voicemail.
- Conducts weekly walk through the community, looking for any safety issues and other areas for improvement.
- Reviews the Resident Assistant rounds as documented by the wand points report sent by Campus Safety.
- Produce a weekly report which summarizes the week's activity.

Supervision

- Selects, trains, and evaluates six to nine student Resident Assistants.
- Holds weekly staff meetings.
- Holds weekly on-on-one meetings with the Resident Assistants.
- Works in collaboration with [REDACTED] to train and create development opportunities for the Resident Assistant staff.
- Manages Resident Assistants, ensuring satisfactory completion of all job responsibilities.

Housing Operations

- Mediates roommate conflicts and supervises the RAs in doing the same. Recommends necessary room changes.
- Collaborates with International Programs housing staff at the beginning of each quarter regarding creation of move-in kits.
- Assists with move-in and move-out processes, training and supervising the Resident Assistant staff and collaborating with other professional staff to develop effective processes and ensure an excellent experience for incoming residents.

Residence Life

- Advises the Resident Housing Association.
- Documents incidents and violations of community standards, and ensures that the Resident Assistant staff does the same.
- Communicates frequently with Campus Safety and [REDACTED] to maintain consistent enforcement of policies and timely adjudication of violations of community standards. Has intentional conversations and applies sanctions which are designed to create positive outcomes for individual students and the community as a whole.
- Collaborates with [REDACTED] for recruitment of Resident Assistant staff.
- Supervises the Resident Assistants in their planning, promotion, and execution of social and educational programs, including the quarterly Welcome Week and Resident Appreciation Week programs.
- Creates and maintains a supportive community that meets the needs of all [REDACTED] residents, with special attention paid to the diverse needs of International and Domestic student groups.

* * *

Other Duties

- Other duties as assigned.

The initial record also included, among other things: a copy of the beneficiary's resume, diplomas awarding the beneficiary a Bachelor of Science degree and a Master of Science degree issued by [REDACTED] transcripts, letters of recommendation, the petitioner's financial statements for years ending December 31, 2012 and 2013, and a brochure on the petitioner's management services.

Upon review of the initial record, the director requested additional evidence to establish that the proffered position qualifies for classification as a specialty occupation. The director outlined the specific evidence that could be submitted.

In response, the petitioner submitted a copy of the Association of College & University Housing – International's (ACUHO-I) Standards and Ethical Principles, a compendium of best practices that colleges and universities providing housing are encouraged to follow. This document, discussing the qualifications for housing officers, states:

Qualifications for housing officer positions can be gained through formal academic preparation, workshops, active research, self-study, work experience, participation in professional organizations, and in-service training. Well-rounded and effective housing officers gain knowledge through each of these methods.

The ACUHO-I compendium also recommends qualifications for several different housing officer positions. The petitioner has highlighted the position titled "Housing officer in charge of central office administration, assignments, conference housing, or apartment family housing." The qualifications recommendation for this position is "a degree in any of the above areas, and significant experience in the general area of responsibility." We observe that the degrees that are listed for positions other than the one the petitioner has highlighted include: a terminal degree in higher education, business administration, human behavior related fields, engineering, hotel and restaurant administration, dietetics, college student personnel, or counseling.

The petitioner also submitted a letter, dated June 4, 2014, prepared by [REDACTED] Ph.D, the [REDACTED] for ACUHO-I. Dr. [REDACTED] noted that the ACUHO-I is the professional association for staff in housing and residence life and that the association includes thousands of campus housing professionals and companies as members. Dr. [REDACTED] referenced the following two quotes from the ACUHO-I Standards:

- "All staff members are qualified for their positions on the basis of graduate education and/or an appropriate combination of education and experience (p. 21)."
- "Staff members are qualified for their positions on the basis of written criteria established by the institution" (p. 21).

Dr. [REDACTED] then opined: "Our standards set an expectation for advanced education and experience for staff in student housing. Generally, master's degrees in student affairs, student personnel, or higher education or closely related fields are the expected areas of study for the specialized positions."

The petitioner also included copies of 14 job postings for positions it claimed are similar to the proffered position. The petitioner further submitted copies of 23 of its postings for the same or similar positions throughout the United States and noted that a bachelor's degree or higher is required for the positions. The petitioner also indicated that it employed five persons in the position of Assistant Director for [REDACTED] and that each of the individuals held bachelor's degrees and four of the five persons held master's degrees.

Upon review of the record, the director denied the petition. The director determined that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner asserts that it has established that the proffered position requires a bachelor's degree and moreover that it requires a bachelor's degree and relevant experience for the position. The petitioner also references the beneficiary's academic achievements which include a bachelor's degree in human resource management and business administration and a master's degree in educational leadership. The petitioner cites an unpublished decision and *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), as support that it has satisfied the requirements demonstrating the proffered position is a specialty occupation. The

petitioner also observes that its job classification, "lodging manager," like many job classifications, encompasses a wide range of positions. In that regard, the petitioner asserts that the job responsibilities for the proffered position are significantly more complex than those that might be required of a typical "lodging manager." The petitioner points out that the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* does not include a description or category for every job in the U.S. labor market and that the jobs in a particular occupational category might have a wide variance in educational requirements. The petitioner asserts that in such cases, the determination of whether the position is a specialty occupation relies on the standards set forth in the particular industry. The petitioner emphasizes that it has submitted evidence of its minimum requirements, evidence that other organizations employing persons in similar positions likewise require a bachelor's degree, and evidence that the industry standards and experts recognize that a bachelor's degree is the minimum required standard for entry into the profession.

III. MATERIAL FINDINGS

A. The Proffered Position

The issue here is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. 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."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner has not done so here.

In the instant case, the duties of the proffered position, as described by the petitioner in support of the Form I-129 petition and in response to the director's RFE, do not include duties that demonstrate the individual performing the duties must have a bachelor's degree in a specific discipline, in order to perform them. For example, the petitioner lists several administrative tasks that the beneficiary will be required to perform, including checking email and voicemail, monitoring and writing reports, and walking through the community. Additionally, the beneficiary will hire and train six to

nine student resident assistants, hold staff meetings, and generally supervise these individuals. The petitioner indicates that generally the beneficiary will work with residents and assist with move-in, move-out processes, training, mediation of disputes, and assist with maintaining a supportive and safe community.

Upon review of these generally described duties, it is not evident that the proposed duties, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. That is, to the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested. The job descriptions do not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities. The overall responsibilities for the proffered position which contain generalized functions lack sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's operations. The petitioner has failed to demonstrate how the performance of the duties of the proffered position, as described by the petitioner, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.⁵

Moreover, upon review of the petitioner's description of the duties of the proffered position, we observe that the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks it generally describes. Thus, the petitioner failed to specify which tasks were major functions of the proffered position and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not even establish the primary and essential functions of the proffered position.

In addition, when attempting to understand the actual duties of the proffered position and the level of complexity they may require, we look to the LCA submitted with the petition. The LCA provides not only the classification the petitioner believes most closely corresponds to the duties of its proffered position but also provides the petitioner's attestation regarding the appropriate wage level attached to the level of responsibilities and complexity of tasks inherent in the position. As noted above, the petitioner attested on the LCA that the occupational classification for the position is "Lodging Managers," SOC (ONET/OES) Code 11-9081, at a Level I (entry-level) wage.

We note that wage levels should be determined by the petitioner 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,

⁵ The petitioner's statements regarding its requirements to perform the duties of the proffered position will be discussed in detail below.

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 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.⁶ The 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.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate, the attested wage level in this matter, is described 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.

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.

Here, the petitioner's designation that the proffered position requires only a Level I, entry-level wage demonstrates the petitioner's belief that the proffered position is a comparatively low,

⁶ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

Thus, the petitioner's claims that the job responsibilities for the proffered position are significantly more complex than those that might be required of a typical "lodging manager," and that she will serve in a leadership role, are contrary to the wage level it designates on the LCA. Given that the LCA submitted in support of the petition is for a Level I wage, it must therefore be concluded that either (1) the position is a low-level, entry position relative to other lodging manager positions and, thus, based on the findings of the *Handbook*, published by the Bureau of Labor Statistics, the proffered position is not a specialty occupation; or (2) the LCA does not correspond to the petition.

In that regard, we point out here that while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the U.S. 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, if the petitioner's claims that the proffered position is more complex than that of a typical lodging manager, and requires the beneficiary to serve in a leadership role, the petitioner has failed to submit a valid LCA that corresponds to the required Level III or IV wage level, and the petition must be denied for this reason.

B. The Petitioner's Requirements for the Position

As noted above, the petitioner claims that the required educational requirement for the proffered position is "a minimum of a Bachelor's level college degree and two years of demonstrated

leadership experience." The petitioner's job postings also reflect that a college or bachelor's degree and one or more years of experience are required for the advertised positions while also noting that a master's degree is preferred. Preference, however, is not synonymous with a standard entry requirement. The petitioner's job postings do not indicate that the required college or bachelor's degree must be in a specific discipline.

Here, we find that the petitioner's claim that a bachelor's degree 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, 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) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree 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 (1st Cir. 2007).

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.

We have reviewed the petitioner's citation to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, that appears to be included in the appeal 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." 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). However, the petitioner here 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, the petitioner 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*.⁷ We also note that, 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 this office, the analysis does not have to be followed as a matter of law. *Id.* at 719. Similarly, the petitioner's citation to an unpublished decision is accorded no probative weight. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

We recognize that the petitioner desires an employee with certain skills and experience, however, the petitioner does not substantiate that a bachelor's degree in a specific field is necessary or would provide the knowledge to perform the general duties it ascribes to the proffered position. The petitioner has not provided a sufficiently detailed description of the beneficiary's actual day-to-day tasks to provide a basis to substantiate any specific coursework that would be necessary to perform the duties of the position. 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. Again, USCIS has consistently stated that, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Moreover, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the

⁷ 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 *de novo* review of the matter.

time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

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

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

C. The Industry Standard

The petitioner has submitted information from its professional association and one of the directors of that association, in support of its claim the proffered position is a specialty occupation. We have reviewed this information but do not find that the petitioner's industry has established a minimum academic requirement to perform the duties of the proffered position. Upon review of the ACUHO-I Standards and Ethical Principles compendium, we find that the document does not establish a standard minimum requirement to enter into the occupation of an assistant director of residence life or an industry standard for parallel positions among similar organizations. Rather, this document acknowledges that the qualifications for housing officer positions can be gained a number of ways. As Dr. [REDACTED] pointed out:

- "All staff members are qualified for their positions on the basis of graduate education and/or an appropriate combination of education and experience (p. 21)."
- "Staff members are qualified for their positions on the basis of written criteria established by the institution" (p. 21).

Thus, it appears that a combination of education and experience is sufficient to qualify housing staff members and that each institution establishes its own criteria for required qualifications. Such generalizations do not support a required minimum or industry standard. Moreover, neither the standards of this organization nor Dr. [REDACTED] identifies a specific discipline, type of degree, or number of years of specific experience required to perform the general duties of the position proffered here. We acknowledge Dr. [REDACTED] opinion that ACUHO-I's standards set an expectation for advanced education and experience for student housing staff and his generalization

that a master's degree in student affairs, student personnel, or higher education are expected areas of study for such positions. Again, however, this opinion does not denote an industry standard or minimum requirement that student housing staff possesses a bachelor's or higher degree or its equivalent in a specific discipline directly related to the duties to be performed. We further observe that Dr. [REDACTED] does not appear to have been informed that the petitioner here provided 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. Again, such a wage-level is contrary to the expectation or requirement that the successful applicant for the proffered position would possess a bachelor's or master's degree.

We have also considered the 14 job postings submitted by the petitioner to demonstrate an industry standard for positions parallel to the proffered positions. As a preliminary matter, we note that the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Additionally, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a *specific specialty*, or its equivalent, is required for the positions. For example, seven of the advertisements note generally a bachelor's degree, with no further specification is required. Two advertisements, note generally that a master's degree is preferred but do not further elaborate on the specific specialty of the underlying bachelor's degree. Further, three advertisements indicate that a bachelor's degree in an appropriate area of specialization, accompanied by two or more years of experience is required; but do not specify the "appropriate" area of specialization. Two additional advertisements indicate that (1) a four-year degree in student life, or (2) the equivalent of a four-year degree in one of the behavioral sciences, public or business administration, is acceptable for the advertised positions.

Upon review, the job advertisements do not establish that similar organizations to the petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the petitioner's industry. Further, it must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.⁸

⁸ The petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random

Upon review of the evidence submitted by the petitioner to demonstrate an industry standard for qualifications for positions in campus staff housing exists, we find that the record does not support this claim.

IV. APPLICATION OF THE CRITERIA AT 8 C.F.R. § 214.2(h)(4)(iii)(A)

The material deficiencies in the evidentiary record are decisive in this matter and they 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 on the issue of specialty occupation.

Assuming for the sake of argument that the proffered duties as generally described by the petitioner would in fact be the duties to be performed by the beneficiary, we will analyze the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation.

To make its determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

We recognize DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁹ As previously mentioned, the petitioner certifies on the LCA that the proffered position falls under the occupational category "Lodging Managers." We reviewed the chapter of the *Handbook* entitled "Lodging Managers" including the sections regarding the typical duties and requirements for this occupational category. We observe, as the petitioner pointed out on appeal, that the duties for a lodging managers' occupation encompass a broad range of tasks and we agree that the proffered position falls under this occupational title as described in the *Handbook* only generally. However, as the petitioner certified that its proffered

selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position (for organizations similar to the petitioner) required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

⁹ Our references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Lodging Managers."

position most closely corresponds to that of a lodging manager and the duties set out in the *Handbook*, incorporate some of the duties the petitioner ascribed to the proffered position, we have reviewed the educational requirements for this occupational classification.¹⁰ However, the *Handbook* does not indicate that "Lodging Managers" 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.

In regard to the education and training for a lodging manager, the *Handbook* reports:

Many applicants can qualify as a lodging manager by having a high school diploma and several years of experience working in a hotel. However, most large, full-service hotels require applicants to have a bachelor's degree. Hotels that provide fewer services generally accept applicants who have an associate's degree or certificate in hotel management or operations.

* * *

Most full-service hotel chains hire candidates with a bachelor's degree in hospitality or hotel management. Hotel management programs typically include instruction in hotel administration, accounting, marketing, housekeeping, food service management and catering, and hotel maintenance and engineering. Computer training is also an integral part of many degree programs, because hotels use hospitality-specific software in reservations, billing, and housekeeping management. The Accreditation Commission for Programs in Hospitality Administration accredits about 60 hospitality management programs.

At hotels that provide few services, candidates with an associate's degree or certificate in hotel, restaurant, or hospitality management may qualify for a job as a lodging manager.

Also, many technical institutes and vocational and trade schools offer courses that are recognized by the hospitality industry that may help in getting a job.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Lodging Managers," <http://www.bls.gov/ooh/management/lodging-managers.htm#tab-4> (last visited Mar. 27, 2015).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into a lodging manager

¹⁰ For a complete discussion of the duties of a "lodging manager" see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Lodging Managers," <http://www.bls.gov/ooh/management/lodging-managers.htm#tab-2> (last visited Mar. 27, 2015).

occupation. Rather, the *Handbook* points out several paths to becoming a lodging manager, one of which is only a high school diploma and an indefinite amount of experience. Notably, the *Handbook* does not state that such experience must be equivalent to a bachelor's degree in a specific specialty. Furthermore, while the *Handbook* reports that "[m]ost full-service hotel chains hire candidates with a bachelor's degree in hospitality or hotel management" the petitioner here is not a full-service hotel chain and most is not indicative of a normal minimum entry requirement for all lodging manager positions.¹¹

The information in the *Handbook* regarding this occupation, emphasizes the need for the duties of the position be described in detail, that any directly related coursework necessary to perform the duties of the position be delineated with specificity, and that these elements relate to the petitioner's actual business operations. In this matter, the generic descriptions submitted fail to provide the necessary information to readily assess whether the beneficiary will be required to primarily perform duties that require the theoretical and practical application of a body of highly specialized knowledge *and* the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. For efficiency's sake, we hereby incorporate the above discussion. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

¹¹ We note for instance that the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of lodging managers positions require at least a bachelor's degree in a specific discipline or a closely related field, it could be said that "most" lodging managers positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

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 a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Additionally, we discussed in the previous section that the professional association affiliated with the petitioner's industry does not report that there is a standard industry-wide requirement of a bachelor's degree in a specific specialty, or its equivalent for positions such as the one proffered here. That discussion is also incorporated here.

Further, when reviewing the job postings submitted by the petitioner, we note that the majority of the advertisers are colleges or universities. According to the U.S. Census Bureau, 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 visited Mar. 27, 2015). Here, as we previously referenced, the NAICS code "611310" specified by the petitioner identifies this U.S. industry as an industry that comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. However, the petitioner in this matter is not a college or university, but rather appears more likely than not to be in the "rooming and boarding houses" industry.

For the petitioner to establish that an organization is similar under this criterion, it must demonstrate that it shares the same general characteristics with the advertising organization. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Moreover, the petitioner has submitted advertisements for positions that do not appear to include duties that are parallel to the proffered position, but rather are more senior in scope than the position proffered here. Incorporating our discussion of the job advertisements in the previous section here, we also find that the petitioner has not established that it is similar to the advertising organizations and that the positions advertised are parallel to the proffered position.

Based upon a complete review of the record of proceeding, the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is (1) common to the petitioner's industry (2) in parallel positions (3) among organizations similar to the petitioner. 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. In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted its 2012 and 2013 financial statements and a brochure on its management services.

However, a review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position 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. Furthermore, the petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The petitioner's conclusory statements are insufficient to establish this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The description of duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.¹² Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

¹² This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. More specifically, the LCA indicates a wage level at a Level I (entry level) wage. As previously mentioned, the wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she 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.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. 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.*

In this matter, the petitioner stated it employed five individuals in the position of Assistant Director for [REDACTED] or Assistant General Manager of [REDACTED] and that each individual possessed a bachelor's degree and four possessed master's degrees. The record does not include these individuals' diplomas or the petitioner's payroll records in support of this claim. Moreover, as referenced above, the petitioner's position announcements for the proffered position do not indicate that a bachelor's degree in a specific specialty is required to perform the duties of the position proffered here. We also reiterate that even if the petitioner had proffered evidence that it only hired individuals with at least a bachelor's degree in a specific discipline, or a degree in a closely related field, or its equivalent, we would still be required to find that the position for which they were employed actually required the degree. Otherwise as noted above, the petitioner could require the degree only to establish the position as a specialty occupation. In this matter, based on the evidence of record, we are unable to determine that the petitioner routinely requires a bachelor's degree in a specific specialty; or its equivalent, for the position proffered here. The record is simply deficient in this regard. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The petitioner claims that the nature of the specific duties of the position in the context of its business operations requires advanced and complex knowledge and that this knowledge is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We reviewed all of the evidence in the record, including the petitioner's brochures, the

financial statements, the petitioner's position announcements, and the descriptions of the proffered position. We carefully considered the petitioner's statements regarding the proffered position and its business operations. However, upon review of the evidence, the record does not support the assertion that the proffered position satisfies this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Furthermore, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties.

The petitioner has not established that the nature of the specific 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. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence fails to establish that the position as described more likely than not constitutes a specialty occupation. The petitioner has not established 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. Accordingly the director's decision must be affirmed and the petition denied on this basis.

V. CONCLUSION

The petition must be denied 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; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

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