



U.S. Citizenship
and Immigration
Services

(b)(6)

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)

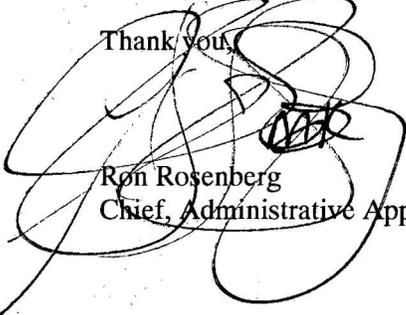
ON BEHALF OF PETITIONER:

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

On the Form I-129 visa petition, the petitioner describes itself as a 63-employee medical clinic established in [REDACTED]. In order to employ the beneficiary in what it identifies as a position in the Market Research Analysts and Marketing Specialists occupational category, with "Global Business Development and Account Specialist" as its job title,¹ the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B, a brief, and supporting documentation.

We find that, upon review of the entire record of proceeding, the evidence of record does not overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a "Global Business Development and Account Specialist" on a full-time basis. The Labor Condition Application (LCA) that the petitioner submitted in support of the petition was certified for use with a job prospect within the "Market Research Analysts and Marketing Specialists" occupational classification, SOC (O*NET/OES) Code 13-1161, and at a Level I prevailing wage rate.

In a letter dated March 25, 2014, the petitioner's human resources director described the petitioning company as follows:

[The petitioner] is a consortium of hospitals and physicians based in the [REDACTED] in Minnesota. Founded at [REDACTED] [the petitioner] brings together the people, technology and facilities required to provide international patients with exceptionally high-quality care in a friendly, comfortable environment. [The petitioner] includes a diverse group of hospitals and physicians in the [REDACTED] that can rival the offerings of major medical centers. The consortium can

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 13-1161, the associated Occupational Classification of "Market Research Analysts and Marketing Specialists," and a Level I prevailing wage rate.

assist international patients and treat many different conditions in both the adult and pediatric population. Whether patients need to see a specialist in cardiology, hematology, oncology, gastroenterology, orthopedics, neurology, pediatrics, organ transplant, blood and marrow transplant, and many other fields, [the petitioner] ensures swift access to physicians who rank among the world's best. We are now working to expand our business development efforts to key government, medical, business, and other circles in several countries, particularly in the Middle East. This H-1B petition relates to a key position to expand our business model and international patient reach.

The petitioner's human resources director further indicated that the beneficiary's specific duties were as follows:

In the professional level position of Global Business Development and Account Specialist, [the beneficiary] is responsible for creating and achieving [the petitioner's] long-term and tactical marketing and account management objectives. As the project leader, the individual will be working to enhance the healthcare systems in the middle east performing research, gap analysis and working toward improving the healthcare for individuals in that region. The Global Business Development and Account Specialist is responsible for developing and growing the international patient volumes by creating strong partnerships and collaboration with overseas locations and establishing strong referral patterns through multiple international channels including foreign hospitals, healthcare systems, key/influential individuals and foreign government or Embassies; utilizing the language, business customs of the country and knowledge of the culture to interact with high-level government officials in order to establish and grow effective working relationships; resolving issues, supporting, developing and maintaining positive working relationships with key influential physicians, hospital staff, and hospital administrators in all affiliated hospitals to assure satisfaction with [the petitioner's] services; and providing support to achieve financial targets and other departmental goals and objectives based on pre-established budgets. The position is accountable for maintaining current customer base as well as developing and executing a plan to increase the satisfaction/engagement of specific international patient population; provides some education & training to assure customers can optimize the use of [the petitioner's] resources to improve their engagement and satisfaction with the organization; and works effectively within [the petitioning company] to investigate and resolve customer issues with the various services and programs.

The petitioner's human resources director stated the following regarding the requirements of the position:

The Global Business Development and Account Specialist position requires the minimum of a bachelor's degree or equivalent in Biological Sciences or related

field and related experience.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 5, 2014. The petitioner was asked to submit corporate documentation. The petitioner was also asked to establish that the proffered position requires an individual with a bachelor's degree in a specific field of study in order to perform the duties of the position. The director outlined some of the types of specific evidence that could be submitted.

In response to the director's RFE, the petitioner asserted that a bachelor's degree or its equivalent is normally the minimum requirement for entry into the position. In support, the petitioner submitted a letter regarding the proffered position, corporate documentation, documentation to establish the beneficiary's credentials, and a letter submitted for consideration as an expert opinion letter to establish that the proffered position is a specialty occupation.

In the July 25, 2014 letter from the petitioner's Human Resources Director submitted in response to the RFE, the following duties of the proffered position were provided:

The Global Business Development and Account Specialist is a professional position and is responsible for assisting [the petitioner] with the development and implementation of tactics and strategies to enhance and improve the global health of individuals in other countries. This position requires extensive knowledge that can only be gained from have (sic) a professional college degree in biological sciences, pre-med or a related education field. The Global Business Development and Account Specialist is responsible for creating and achieving [the petitioner's] long-term and tactical marketing and account management objectives. This position is responsible for achieving the following current business objectives:

- a) Maintaining current clinical and hospital customers and acquiring new client and hospital customers in order to support the mission of increasing the health of individuals in countries doing business with [the petitioner].
- b) Increasing market share and resolving customer/account issues.
- c) Improving customer engagement and satisfaction with [the petitioner] and its partners.
- d) Working to enhance the clinical healthcare system in the Middle East and working toward improving the healthcare for individuals in that region.

In order to meet these important business objectives, Global Business Development and Account Specialist is responsible for the following duties, with the following percentage of time commitment in each functional area noted:

- As part of the maintenance of current customers this position must review current services, analyze customer and service information, analyze Minnesota and competing healthcare services industry and market data, contact customers with service concerns and create concrete system solutions that resolve customer issues; these duties include and require direct interaction and communication on substantive service issues with Medical Doctors, physician service managers, treating physicians, specialists of many fields, program care managers, and other healthcare company executives and consortium members. (25%). [Note: These duties are focused on the 'Domestic' services and objectives described above.]
- Work to enhance the clinical healthcare systems in the Middle East by performing research, gap analysis and working toward improving the healthcare for individuals in that region, including evidence-based research to develop and grow the international patient volumes by creating strong partnerships and collaborations with overseas key leaders of hospitals, clinics and medical institutions (25%). [Note: These duties are focused on the 'International' services and objectives described above.]
- Work to establish strong patient referrals through multiple international channels, including foreign hospitals, healthcare systems, key/influential individuals and foreign governments or Consulates/Embassies, including utilization of language skills to review and utilize data and reports on healthcare in Middle East countries to utilize in interaction, program development and proposals to Medical Director-level and foreign Ministry of Health officials in order to establish and grow effective working relationships (20%). [Note: These duties are focused on the 'International' services and objectives described above.]
- Provide support in order to achieve financial targets and other departmental goals and objectives based on pre-established budgets using up-to-date business tools, including Parato Charts, Fish Diagram, Excel spread sheets and more (10%). [Note: These duties are focused on both the 'Domestic' and 'International' services and objectives described above.]
- Provide education and training on the full range of services offered by [the petitioner] to ensure that customers can optimize the use of [the petitioner's] resources and hospital and clinic partnerships; Meet and interact with various key foreign individuals on a frequent basis to further advance the services of [the petitioning company] (10%). [Note: These duties are focused on both the 'Domestic' and 'International' services and objectives described above.]
- Resolve issues, support, develop and maintain positive working relationships with key influential physicians, hospital staff, and hospital administrators in all affiliated hospitals to assure satisfaction with the [the petitioner's] services

(5%). [Note: These duties are focused on the 'Domestic' services and objectives described above.]

- Accountable for maintaining current customer base, as well as developing and executing a plan to increase the satisfaction/engagement of specific international patient populations; Work effectively with [the petitioning company] to investigate and resolve customer issues with the various services and programs. (5%). [Note: These duties are focused on the 'Domestic' services and objectives described above.]

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on August 8, 2014. On appeal, counsel submits a brief and additional documentation in support of the petition.

II. STANDARD OF REVIEW

As a preliminary matter and in light of counsel's references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

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

* * *

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

* * *

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

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

director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the petitioner has not established that its specialty occupation claim is "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

III. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

A. Law

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly

been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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.

B. Preliminary Findings

i. Regarding the Proffered Position's Duties and the Relative Complexity of the Position

As a preliminary matter, we do not find that the record establishes relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise. While the petitioner may claim that the nature of the proposed duties and the position that they are said to comprise elevate them above the range of usual Market Research Analysts and Marketing Specialist positions and duties by virtue of their level of specialization, complexity, and/or uniqueness, the evidence of record does not support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As evident in the job description quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More specifically, they lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. Take for example the following duty descriptions:

Must review current services, analyze customer and service information, analyze Minnesota and competing healthcare services industry and market data

Work to enhance the clinical healthcare systems in the Middle East by performing research, gap analysis

Provide support in order to achieve financial targets and other departmental goals and objectives based on pre-established budgets using up-to-date business tools

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of the services that the beneficiary must review, work to enhance or provide support for. Nor does the record contain substantive explanation or documentation showing the volume and range of Minnesota and competing healthcare services industry and market data the beneficiary would have to analyze, the healthcare systems the beneficiary would have to review or the financial targets and other departmental goals or objectives for which the beneficiary would have to provide support. Likewise, we see that the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the above-referenced duties.

Overall, we find that the description of the duties of the proffered position fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. The description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. Thus, we conclude that, as generally described as all of the elements of the constituent duties are, they do not - even in the aggregate - establish the nature of the position or the nature of the position's duties as more complex, specialized, and/or unique than those of Market Research Analysts and Marketing Specialist positions that do not require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent.

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 prevailing-wage level attached to the level of responsibilities and complexity of tasks inherent in the position. As noted above, by submitting an LCA certified for a Level I prevailing-wage rate, the petitioner asserted that the proffered position only merited that prevailing-wage rate, the lowest of the four possible prevailing-wage rates.

We note, that wage levels attested to for submission of an LCA 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 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.² U.S. Department of Labor (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 submission of an LCA certified for only a Level I, entry-level prevailing-wage signifies the petitioner's endorsement of the appropriateness of a characterization of the proffered position as a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on prevailing-wage levels, this wage rate indicates the petitioner's assertion 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 he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he 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

² 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.

that a Level I wage should be considered.

The abstract level of information provided regarding the duties of the proffered position and the wage level on the LCA fail to provide sufficient information regarding the petitioner's position to determine that the position proffered here is a specialty occupation position. The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. The record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty (or its equivalent). Consequently, this precludes a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

ii. Regarding Professor [REDACTED] Evaluations of the Position's Educational Requirements

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted a July 25, 2014 letter from [REDACTED] Ph.D., Professor of Marketing, Director, Pharmaceutical Business Program, [REDACTED], who made the following assertions:

The position in question . . . requires extensive interaction on a daily basis with individuals holding bachelor's and higher levels of educational degrees in the highly technical and specialized field of medicine. Interacting with physicians, specialists, program care managers and health care company executive will require detailed knowledge in biological and medical sciences. The foundation attained from undergraduate study in biological sciences or related medical field is critical for being able to communicate efficiently and competently with other health care professionals.

It is my opinion, a person with a Bachelor's degree in biological sciences or a related medical field of study is most appropriately qualified to hold the position of Global Business Development and Account Specialist for [the petitioner]. A candidate not having this type of knowledge would be at a severe disadvantage in not being able to effectively discharge the duties of the position in question, and likely have a negative impact on the performance of [the petitioning company].

On appeal, Professor [REDACTED] submitted another evaluation reaffirming the above findings.

We reviewed the letters in their entirety. However, as discussed below, the letters from Professor [REDACTED] are not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

Upon review of the opinion letters from Professor [REDACTED] we find that there is no indication that Professor [REDACTED] possesses any substantive knowledge of the petitioner's proffered position and its business operations. Professor [REDACTED] 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, Professor [REDACTED] does not indicate that he visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Furthermore, there is no indication that the petitioner and counsel advised Professor [REDACTED] that the petitioner characterized the proffered position as low and entry-level, for a beginning employee who has only a basic understanding of the occupation (as indicated by the Level I wage-level on the LCA). As explained above, that prevailing-wage rate is appropriate for a position in which the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results. We find this to be a relevant aspect of the position, as it reflects an assessment that the proffered position is of relatively low complexity in relation to other jobs within the position's occupational group. In this respect too, we find that Professor [REDACTED] opinion is not based upon a sufficient factual foundation. 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.

Moreover, we find that Professor [REDACTED] does not provide an adequate factual and analytical foundation for his ultimate conclusion that the proffered position qualifies as a specialty occupation. Further, Professor [REDACTED] opines about normal hiring practices, but he provides no documentation in support and he cites no studies, industry publications, surveys, or any authoritative source for his statements.

The conclusions pronounced by Professor [REDACTED] are not supported by any persuasive degree of analytical and factual content and are not supplemented by independent, objective evidence supporting his findings and ultimate opinion. Consequently, we find that Professor [REDACTED] submissions are not probative evidence towards satisfying any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), and we treat them accordingly.

We, in our discretion, may 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 advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). It should be noted that, for efficiency's sake, the above discussion and analysis regarding Professor [REDACTED] letter is hereby incorporated as part of this decision's later analyses of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

- iii. Regarding the Testimonial Letters from Dr. [REDACTED], Chief Executive Officer, [REDACTED]; [REDACTED] Head of the Wounded Follow-Up Committee, Health Attaché, [REDACTED]; [REDACTED] Assistance Defense Attaché for the Health Department of the [REDACTED] and [REDACTED], M.D., Neurosurgeon, [REDACTED]

In support of the assertion that the proffered position satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner also submitted four letters from individuals who have expressed experience and knowledge of the health care industry, and familiarity with the petitioner and the proffered position.³ These four individuals assert that they can speak to the specialized nature of the position being offered to the beneficiary. All four individuals conclude that the skillset required to perform the duties of the proffered position require an individual with a least a baccalaureate-level education in biological sciences or a related field. As will now be discussed, we find that the letters do not constitute probative evidence of the proffered position satisfying any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); see also *id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a

³ Dr. [REDACTED] Chief Executive Officer, [REDACTED], states that "I work closely with [the petitioner] to send patients from Qatar to their organization to help facilitate the patient's healthcare."

Mr. [REDACTED] Head of the Wounded Follow-Up Committee, Health Attaché, [REDACTED], states that the proffered position will "continually provide foreign Health Minister offices with updated information about the expanding scope of services provided through [the petitioner's] network of care providers in the United States."

[REDACTED] Assistance Defense Attaché for the Health Department of the [REDACTED] confirms that the petitioner is "one of the offices that we send patients to in order to receive care within the United States."

Dr. [REDACTED], expresses familiar with the petitioner because he "works closely with [the petitioner] as we treat patients that are referred to us from their organization."

greater need for the petitioner to submit corroborative evidence. Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998).

First, the submissions do not discuss the duties of the proffered position in any substantive detail. The individuals effectively reiterate the duties provided by the petitioner, duties which have already been determined to be relatively abstract and generalized. As we noted above, the duties lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations.

Next the letters are not accompanied by, and do not expressly state the full content of, whatever documentation and/or oral transmissions upon which they may have been based. For instance, the individuals do not indicate how often they communicated with the petitioner in their course of business as to what the performance of the general list of duties cited by them would actually require, or whether they visited the petitioner's business premises. Nor do the individuals articulate whatever familiarity they may have obtained regarding the particular content of the work products that the petitioner would require of the beneficiary. In short, while there is no standard formula or "bright line" rule for producing a persuasive opinion regarding the educational requirements of a particular position, a person purporting to provide an expert evaluation of a particular position should establish greater knowledge of the particular position in question than the individuals have done here.

Furthermore, the individuals' descriptions of the position upon which they opine do not indicate that they considered, or were even aware of, the fact that the petitioner submitted an LCA that was certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation which, as discussed above, signifies that the beneficiary is only expected to possess a basic understanding of the occupation. In any event, the individuals nowhere discuss this aspect of the proffered position. We consider this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for the ultimate conclusions provided as to the educational requirements of the position upon which they opine.

For all of these reasons, we find that the letter provided are not probative evidence towards satisfying any criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). For the sake of economy, we hereby incorporate the above discussion and findings into its analysis of each of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Based upon a complete review of the record of proceeding, we find that the petitioner has failed to establish (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty. Consequently, this precludes a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

Irrespective of the above findings, we will continue to discuss the evidence of record to identify

other evidentiary deficiencies that preclude us from reasonably determining that the petition has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

C. Application of the Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁴ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Market Research Analysts" occupational category, and we will accordingly analyze the proffered position as such.

The *Handbook* states the following with regard to general duties of market research analysts:

Market research analysts study market conditions to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price. . . .

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends
- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, and opinion polls
- Gather data about consumers, competitors, and market conditions
- Analyze data using statistical software
- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients and management.

⁴ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. This office's references to the *Handbook* are from the 2014-15 edition available online.

Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics, preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

Analysts help determine a company's position in the marketplace by researching their competitors and analyzing their prices, sales, and marketing methods. Using this information, they may determine potential markets, product demand, and pricing. Their knowledge of the targeted consumer enables them to develop advertising brochures and commercials, sales plans, and product promotions.

Market research analysts evaluate data using statistical techniques and software. They must interpret what the data means for their client, and they may forecast future trends. They often make charts, graphs, and other visual aids to present the results of their research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Market Research Analysts," <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited March 23, 2015).

The *Handbook* states the following with regard to the educational requirements for entrance into the field:

Most market research analysts need at least a bachelor's degree. Top research positions often require a master's degree. Strong math and analytical skills are essential.

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics, psychology, and sociology, are also important.

Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

Id. at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited March 23, 2015).

The *Handbook's* information regarding entrance into this occupational category does not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. First, the *Handbook* specifically states that "[m]ost market research analysts need at least a bachelor's degree." 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 market research analyst positions require at least a bachelor's degree, it could be said that "most" market research analyst 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." § 214(i)(1) of the Act.

Additionally, as evident in the above-quoted section on educational requirements, the *Handbook* indicates that baccalaureate degrees within a wide range of apparently unrelated fields are acceptable for entry into the occupation. We find that the range of degree and "background" fields referenced in the *Handbook* do not constitute a specific specialty: such a wide range of acceptable majors or academic concentrations is not indicative of an occupational classification within which any particular position's inclusion would normally require the need for at least a bachelor's degree, or the equivalent, in a specific specialty, as required by section 214(i)(1) of the Act and its implementing regulation at 8 C.F.R. § 214.2(h). 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.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in the specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.⁵ Section 214(i)(1)(B) of the Act (emphasis added).

⁵ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, 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. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Here, although the *Handbook* indicates that a bachelor's or higher degree is required for most market research analyst positions, it also indicates that baccalaureate degrees in various and apparently unrelated fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted above, 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. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that entry into the Market Research Analysts occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the particular position proffered here as being one for which a bachelor's or higher degree, or the equivalent, in a specific specialty is normally the minimum requirement for entry.

The *Handbook's* indication that a bachelor's degree in business administration or "background" in "business administration" would provide sufficient preparation for a career as a market research analyst is further evidence that a bachelor's degree in a specific specialty, or the equivalent, is not required for this position. 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, 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). Although a general-purpose bachelor's degree, such as a degree in business administration without further specification, 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.

Accordingly, as the *Handbook* indicates that entry into the Market Research Analyst occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent, it does not support the proffered position as satisfying this first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). That is, in light of the *Handbook's* information on the range of acceptable educational credentials for entry into the market research analyst occupational group, a position's inclusion within this group is not in itself sufficient to establish that position as one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally a minimum requirement for entry.

When, as here, the *Handbook* does not support the proposition that the proffered position of Market Research Analyst 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."

We here refer the petitioner back to our earlier comments and findings with regard to the letters submitted by Professor [REDACTED], Dr. [REDACTED], Mr. [REDACTED], [REDACTED], and Dr. [REDACTED]. As noted above, we find that said letters are not probative evidence that the proffered position is a specialty occupation.

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, the record contains no letters or affidavits from firms or persons in the industry attesting to such a requirement. Further, there is no evidence of a professional association having made a bachelor's degree in a specific specialty, or the equivalent, a minimum requirement for entry.

Therefore, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

Next, we find that the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

The statements of counsel and the petitioner with regard to the claimed complex and unique nature of the proffered position are acknowledged. However, as reflected in our earlier comments and

findings regarding the record's description of the duties comprising the proffered position, the petitioner has not provided sufficient evidence to establish why it is more likely than not that the proffered position can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent. We here refer the petitioner back to our comments and findings with regard to the generalized and relatively abstract terms in which the proposed duties and the position that they are said to comprise were presented. They simply do not establish a level of complexity or specialization that would elevate the proffered position above positions in the Market Research Analysts occupational group that the *Handbook's* information indicates can be performed by persons without a bachelor's or higher degree, or the equivalent, in a specific specialty.

Counsel and the petitioner's assertions are further undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a prevailing-wage level that is only appropriate for a position in which the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

As the evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the position.

Our review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that the 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 proffered position.⁶

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual

⁶ Any such assertion would be undermined in this particular case by the fact that the petitioner submitted an LCA that had been certified for a Level I wage-level, which is appropriate for use with a comparatively low, entry-level position relative to others within the same occupation.

performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. Thus, the director provided the petitioner with an additional opportunity to establish a history of recruiting and hiring for the proffered position only individuals with a bachelor's or higher degree in a specific specialty, or the equivalent. In response to the RFE, the petitioner's HR Director provided a copy of their organization chart and stated that the chart "confirms that the degree requirement specified in support of this H-1B petition is consistent with our standard company hiring practice," that is by "includ[ing] the names, professional and level/type of degree of those who hold our professional positions." The HR Director further stated, "You can see that we hire healthcare professionals, with degrees in relevant professional fields." The organization chart includes three names under the heading of "Global," the beneficiary's name, [REDACTED] and [REDACTED].

The petitioner did not provide the two individual's job title, duties and day-to-day responsibilities to support its claim that their position is the same as the proffered position. The petitioner did not provide any substantive information corroboratively detailing their actual job duties, their pay level, and other relevant factors such as when their employment in the position began; whether they had their degree by that time; and the educational requirements, if any, that the petitioner may have specified in recruiting efforts for the job in which the two referenced individuals are now employed. 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). Thus, we accord little to no weight to the petitioner's unsubstantiated assertions about [REDACTED] and [REDACTED].

As the evidence of record does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), 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 them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

As reflected in this decision's earlier discussions and findings regarding record's duty descriptions - which we hereby incorporate into this present analysis - the nature of the proposed duties as described in the record of proceeding do not show the level of specialization and complexity required to satisfy this criterion. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so

specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or the equivalent. By the same token and as evident in the duty descriptions themselves, the nature of the proposed duties are not developed with sufficient substantive detail to distinguish them from the nature of the duties of positions within the Marketing Research Analysts occupational group whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

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 at a Level I wage.

For the reasons discussed above, we conclude that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that the duties of the proffered position are 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. The evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

IV. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we 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 appeal will be dismissed and the petition will be denied.

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.