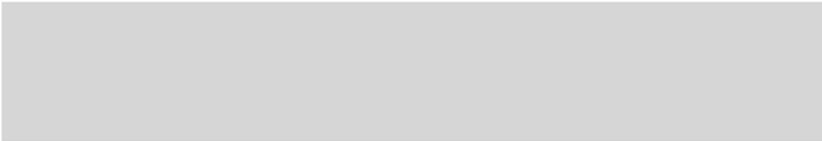


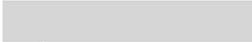
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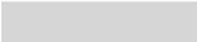
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **APR 09 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a two-employee "[o]nline [s]ervice that [p]rovides [c]onsumer [i]nvestors with [i]nformation about [s]tock and [f]und [i]nvesting and [e]xisting [i]nvestment [p]ortfolios"¹ established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Data Analyst" position at a salary of \$68,000 per year,² 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 on August 12, 2014, concluding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation position. On September 15, 2014, counsel filed the instant timely appeal.

The record of proceeding before us 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, Notice of Appeal or Motion, and supporting documentation.

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

II. STANDARD OF REVIEW

In the exercise of our administrative 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 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 52399, "All Other Financial Investment Activities." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "52399 All Other Financial Investment Activities," [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=52399&search=2012 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=52399&search=2012%20NAICS) (last visited April 6, 2015).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Financial Analysts" occupational classification, SOC (O*NET/OES) Code 13-2051, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

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. at 375-76.

We conduct our review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, as noted above, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's ground for denial was correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the evidence of record does not establish that the claim of a proffer of a specialty occupation position is "more likely than not" or "probably" true. In other words, 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 claim that the proffered position qualifies as a specialty occupation is "more likely than not" or "probably" true.

III. SPECIALTY OCCUPATION

A. Law

To meet the petitioner's burden of proof in establishing the proffered position as a specialty occupation, the evidence of record must establish that the employment the petitioner 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. Factual and Procedural History

In this matter, the petitioner stated on the Form I-129 petition that it is an "[o]nline [s]ervice that [p]rovides [c]onsumer [i]nverstors with [i]nformation about [s]tock and [f]und [i]nvesting and

[e]xisting [i]nvestment [p]ortfolios," and that it seeks the beneficiary's services in a position that it designates as a "Data Analyst" to work on a full-time basis. The petitioner was established in [REDACTED] and has two employees. The petitioner, however, did not state its gross or net income on the Form I-129. In its March 14, 2014 support letter, the petitioner stated that it is "an early-stage startup company." The record of proceeding does not contain any of the petitioner's actual and current financial information.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Financial Analysts" - SOC (ONET/OES) Code 13-2051, and states that the rate of pay for the proffered position would be \$68,000 per year.

In a March 14, 2014 letter submitted in support of the petition, the petitioner stated that the duties of the proffered position would include the following tasks:

[The petitioner] will crawl financial data such as securities prices and fund/stock metadata from data providers and public web sites using scripts written in Python. He will inspect and manually edit this data in Excel to ensure data correctness and legibility. Moreover, he will create proprietary risk, return, and allocation models in Excel and/or Python. [The petitioner] will generate case-by-case reports to summarize the data using Excel, Python, and SQL. Furthermore, he will research, source, and license the raw information our service provides, e.g. fund and stock price historical data. [The petitioner] will also design value-added analyses on top of this data, such as risk analyses and projections of future returns. He will manually curate the data to ensure data correctness and legibility.

The petitioner also stated that the proffered position "requires a Bachelor's degree in Business Administration, Research, Information Science, or a related field." The petitioner submitted a copy of a credential evaluation dated March 7, 2014 rendered by [REDACTED] of [REDACTED] [REDACTED] stating that the beneficiary has the U.S. equivalent of a Bachelor of Business Administration degree. In addition, the petitioner submitted, among other things, its February 2014 Business Plan, a slide presentation entitled [REDACTED] by [REDACTED]³ printouts from the petitioner's Facebook⁴ page,⁵ and the beneficiary's academic transcripts.

³ [REDACTED] is one of the petitioner's two employees.

⁴ See <http://www.facebook.com>.

⁵ The record of proceeding contains many untranslated documents, including the referenced Facebook printouts and other documents. Because the petitioner did not submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, that evidence is not probative and it will not be accorded any weight in this proceeding.

The director found the initial evidence insufficient to demonstrate that the proffered position qualifies as a specialty occupation and requested additional evidence. In response to the director's RFE, counsel for the petitioner, in a letter dated July 21, 2014, expanded the job description as follows:

50% Financial Research and Analysis with Manual Data Curation

- Contribute to the design of the financial calculations that the company provides. For example, researching, proposing, and prototyping different risk, performance, and forward projection analyses to enable users to understand the financial implications of different securities and portfolios.
- Document company's data methodologies, both for internal use and for external publication.
- Provide financial data for blog posts and other promotional publications that [the petitioner] uses to promote its services.
- Research new financial data sources based on end-user feature requirements.
- Prioritize, manage projects, and implement integration of financial sources into company's portfolio of services.
- Ensure accuracy of financial data, inspecting the output of automated financial tests. [Please note, the sources used for financial research may be unreliable. It is critical that the company compensate for errors within the collected data by having the Data Analyst manually edit financial data where necessary. Often, when integrating information from a variety of sources, there are gaps and discrepancies that are difficult to reconcile automatically. In these cases, the Data Analyst reviews and manually edits the financial data with tools (i.e., spreadsheet or a custom-built internal web tool). For example, public data provided by the SEC may refer to stocks and mutual funds by various names, rather than by their canonical symbol. In this case, the Data Analyst laboriously inspects the output of the automatic matching tool and corrects the tool output when necessary. Also, when integrating mutual fund/stock price history, there may exist missing share merge/ split events which may lead to error on performance/risk calculation. In this case, the Data Analyst must consider these facts and use it in his calculations.]
- Conduct financial research for confirming the missing event/information and manually correct data as needed.

30% Reporting of Financial Data

- Generate manual financial reports based on financial data collected to demonstrate financial data.
- Perform coverage, maintain accuracy, and update the collected data. (Please note that trade frequency and fiscal year of mutual fund/stock and opening, closing times of stock exchange markets vary; it is critical to receive accurate reports in timely manner).
- Provide specific custom reports for end users of [the petitioner's] system.

- Prepare on-demand reports as needed. (E.g., the list of funds outperforming S&P500, etc.)

20% Financial Programming

- Write new manual financial tests that cover millions of data points gathered from dozens of sources.
- Performing manual tests, comparing the company generated data to other data sources and performing spot checks in spreadsheets.
- Performing critical manual testing when delivering high priority reports.
- Write financial software to automatically aggregate financial data from variety of public and paid sources. The company's system collects securities data such as daily stock and mutual funds prices, dividends issued, stock splits, metadata about the securities such as assets class, company sector an industry, mutual fund category, expenses, and holding, brokerage availability, etc. Since the information changes daily, monthly, quarterly, semi-annually, or annually, the company's backend software must be maintained by the Data Analyst to maintain accuracy.
- Maintain company software and extend software to support new financial data. (This job duty requires a working knowledge of the Python and SQL programming languages, in which the software is implemented).
- Program various synthetic measures on top of the aggregated data, such as risk and performance measures (Returns and Standards deviation of historical mutual fund price and pre-expense price estimation).
- Perform data mining and examine SEC Edgar to secure holding data from unstructured report filings.
- Research Edgar database structure, SEC filing types and the ability to read[.]
- Specific types of financial filing and disclosures.
- Crawl and integrate filings on Edgar database and process them into company's format for further data mining workflow.
- Maintain and manage the automated matching process for fund name, by fund symbol, by stock name, and by stock symbol.

Counsel also stated that the beneficiary will "directly report to the CTO, [REDACTED]⁶ and will be responsible for:

[M]aintaining the 'data back-end' for the service including: researching, sourcing, and licensing the raw information for the services that the company provides. E.g., fund and stock price historical data and designing the value-added analyses on top of this data (such as risk analyses and projections of future returns). Also, he will

⁶ [REDACTED] is one of the petitioner's two employees.

manually curate the data to ensure data correctness, legibility, and manage the outsourced data processing work.

On appeal, counsel reiterates the same duties listed in the RFE letter and submits, among other things, two letters in support that a bachelor's degree in Business Administration, Finance, or Economics is an industry standard for the data analyst or similar positions.

C. Analysis

As a preliminary matter, we note that the petitioner lists "a Bachelor's degree in Business Administration, Research, Information Science, or a related field" for the educational requirement of the proffered position. Furthermore, on appeal, counsel states that "[d]ue to complex nature of the duties required of a Data Analyst as described above, it can only be performed by an individual with a college degree in Business Administration." The petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff* at 147.⁷

⁷ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be:

In its support letter, dated March 14, 2014, the petitioner states that in addition to the degree requirement, the candidate must have the following:

... an understanding of accounting, business financial and operational data (e.g., balance sheets & financial statements), portfolio risk-return analysis skills, basic statistics, and experience with data-oriented programming languages, such as SQL and Python. He must also have proficiency with Excel data processing software.

On appeal, petitioner submits the beneficiary's transcript which has certain courses highlighted and also contains course descriptions. On appeal, counsel includes a table of job duties which relates them to certain courses, and states that the courses taken by the beneficiary were "directly related to the job duties." Such evidence may demonstrate a beneficiary's qualification for the proffered position. However, the issue at hand is whether the proffered position is a specialty occupation, which the petitioner must demonstrate before we can address whether the beneficiary is qualified for a specialty occupation. Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation because the petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We first note that the evidence of record does not present the proffered position and its constituent duties in sufficient detail to establish either the substantive nature of the work that the beneficiary would perform in the proffered position or any particular educational or education-equivalent level of any body of highly specialized knowledge in any specific specialty that the beneficiary would have to apply to perform the position.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position proffered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently

elsewise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

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."

Therefore, a fundamental consideration to the issue of whether a proffered position qualifies as a specialty occupation is whether the petitioner has provided substantive information and supportive documentation showing that the beneficiary would be performing services for the type of position for which the petition was filed. However, the petitioner provides minimal documentation related to its financial operations or organization that would shed light on the substantive nature or complexity of the work to be performed by the beneficiary. In its February 2014 business plan, the petitioner states that its internet service [REDACTED] provides its customers with a "highly personalized do-it-yourself investing strategy" and projects no subscribers and investors in 2014, two thousand subscribers and no investors in 2015, and 11 thousand subscribers and 5.8 thousand investors in 2016. The petitioner projects \$1.4 million in revenue in 2016. However, the record contains no substantive information supporting such growth of the company. 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)). The record of proceeding contains insufficient evidence that would indicate that the petitioner has taken any substantive steps towards any expansion of its business.

Furthermore, we find that the petitioner describes the proffered position and its duties in relatively abstract terms of generalized functions. As reflected in the description of the position as quoted above, the petitioner describes the proposed duties in terms that fail to convey the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "[p]rioritize, manage projects," "generate manual financial reports," "[p]rovide financial data for blog posts and other promotional publications," and "provide specific custom reports for end users." These statements do not include information regarding the day-to-day tasks of the position, and the term "manage" does not delineate the actual work that the beneficiary will perform. This is again illustrated by the petitioner's statement that the beneficiary will "maintain company software and extend software to support new financial data." The petitioner does not explain the beneficiary's specific role with respect to "maintain[ing]" and "expand[ing]" the company's software. Similarly, the petitioner stated that the beneficiary will "[m]aintain and manage the automated matching process for fund name, by fund symbol, by stock name, and by stock symbol" without explaining the actual task the beneficiary would perform in "[m]aintain[ing] and managing" the matching process. Furthermore, the petitioner failed to state the actual task the beneficiary would perform in the bullet-pointed duty referencing "[s]pecific types of financial filing and disclosure." Moreover, the petitioner lists similar duties without explaining the differences among such duties. For example, under "Reporting of Financial Data," which will comprise thirty percent of the beneficiary's duties, the petitioner stated that the beneficiary will "[g]enerate manual financial reports," "[p]rovide specific

custom reports," and "[p]repare on-demand reports." This is again demonstrated by the petitioner's statements that the beneficiary will "[p]erform manual tests" and "[perform] critical manual testing." Although, the petitioner listed these duties separately, it failed to provide specifics of these reports and tests to explain the differences among them. Further, the petitioner's statements do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such reports.

This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations and, thus, cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

Without a meaningful job description, 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 actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

Furthermore, in its response to the director's request for further evidence, the petitioner expanded the beneficiary's duties, adding tasks such as "[w]rit[ing] financial software to automatically aggregate financial data," "maintain[ing] company software and extend software to support new financial data," and "program[ing] various synthetic measures on top of the aggregated data." In sum, the initial description appeared to have the beneficiary doing more of the actual work of collecting and reporting financial data, while the second iteration of the job includes software developing duties for the petitioner's operation. The petitioner also included marketing duties to the proffered position such as "[p]roviding financial data for blog posts and other promotional publications that [the petitioner] uses to promote its services."

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, its associated job responsibilities, or the requirements of the position. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E) rather than seek approval of a petition that is not supported by the facts in the record.

Additionally, these software programming and marketing tasks, which are included in the expanded list of duties, are not among the duties of positions located within the "Financial Analysts" occupational category as described in the *Handbook*. Furthermore, these programming and marketing duties appear to be predictable, recurring, and substantive job responsibilities. For example, the petitioner states that the beneficiary will spend twenty percent of his time "[w]rit[ing] financial software to automatically aggregate financial data," "maintain[ing] company software and extend software to support new financial data," and "program[ing] various synthetic measures on top of the aggregated data." Furthermore, the petitioner states that, as part of the duties upon which he would potentially spend fifty percent of his time, the beneficiary will "[p]rovide financial data for blog posts and other promotional publications that [the petitioner] uses to promote its services."

Nevertheless, while there is no provision in the law for specialty occupations to include non-qualifying duties, we view the performance of duties that are incidental⁸ to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature. Anything beyond such incidental duties, however, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation. The record of proceeding does not contain information in sufficient detail regarding these non-financial analyst duties for us to make a determination whether they are specialty occupation duties.

Nonetheless, assuming, *arguendo*, that the proffered duties as described by the petitioner and counsel would in fact be the duties to be performed by the beneficiary, we will nevertheless analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we will first address the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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.

However, before we address the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), we will address the letters submitted by [REDACTED] dated September 10, 2014, and by [REDACTED] dated August 28, 2014. [REDACTED] concludes that the duties of the proffered position "are highly specialized and that only a person that possesses a degree in Business Administration, Finance [o]r Economics would be able to perform them." Similarly, [REDACTED] concludes that "a candidate with a Business Administration degree possesses the requisite knowledge and skills as required for this specialized position." We first note that authors do not list the reference materials on which they rely as bases for their conclusions. It appears that [REDACTED] did not base their opinions on any objective evidence, but instead relied on the proffered position description as provided by the petitioner. The letters do not provide any analysis of the duties of the proffered position; rather, they provide conclusory statements about the proffered position being a specialized occupation. Furthermore, in his

⁸ The two definitions of "incidental" in *Webster's New College Dictionary* 573 (Third Edition, Hough Mifflin Harcourt 2008) are "1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature. . . ."

letter, [REDACTED] lists "sample" duties of a "Data Analyst (Financial Analyst)" position rather than providing the duties of the proffered position and explaining how such duties are so complex or unique that they can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Moreover, both authors find that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration or a related field. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. at 558. In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, 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* at 147.

Furthermore, the authors' 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 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, they 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 their ultimate conclusion as to the educational requirements of the position upon which they opine.

As noted earlier, the LCA submitted by the petitioner in support of the instant position was certified for use with a job prospect within the "Financial Analysts" occupational category, SOC (O*NET/OES) Code 13-2051, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels. The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs.

The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.⁹

Thus, the proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. The authors' omission of such an important factor as the LCA wage-level significantly diminishes the evidentiary value of their assertions. The petitioner's LCA wage-level designation does not support [REDACTED] conclusion that the proffered position involves "complex duties." The authors' omission of such an important factor as the LCA wage-level significantly diminishes the evidentiary value of their assertions.

For all of these reasons, we find that the letters from [REDACTED] are not probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International* at 791.

We now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.¹⁰ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Financial Analysts" occupational category.

The *Handbook* states the following with regard to the duties of positions falling within the "Financial Analysts" occupational category:

⁹ 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 (last visited April 6, 2015).

¹⁰ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2014-15 edition available online.

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

Duties

Financial analysts typically do the following:

- Recommend individual investments and collections of investments, which are known as portfolios
- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements to determine its value
- Meet with company officials to gain better insight into the company's prospects and management
- Prepare written reports
- Meet with investors to explain recommendations

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

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

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

Some analysts work for the business media and belong to neither the buy side nor the sell side.

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

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

The following are examples of types of financial analysts:

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last visited April 6, 2015).

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

Financial analysts typically must have a bachelor's degree, but a master's degree is often required for advanced positions.

Education

Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering. For advanced positions, employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

Id. at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited April 6, 2015).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. Although the *Handbook* states that most positions located within the "Financial Analysts" occupational category

typically need a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be *in a specific specialty*. Rather, the narrative of the *Handbook* reports that "[a] number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering." Thus, for the reasons discussed above, the *Handbook* does not support a claim that "Financial Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

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. Section 214(i)(1)(B) of the Act (emphasis added).

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

Again, the *Handbook* indicates that a variety of fields would "provide appropriate preparation," including accounting, economics, finance, statistics, mathematics, and engineering. The field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. It is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to the proffered position or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, has not established either (1) that accounting, economics, finance, statistics, mathematics, and engineering in general are closely related fields or (2) that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards. Accordingly, as the evidence of record does not establish a

standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, 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 139, 147 (1st Cir. 2007).

Next, we note that the Occupational Information Network (O*NET) Summary Reports are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. The O*NET OnLine Internet site relevant to 13-2051.00 – Financial Analysts assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree."¹¹ Further, O*NET OnLine does not indicate that the four-year bachelor's degrees required by some Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

In response to the RFE, the petitioner claims that the *Dictionary of Occupational Titles* (hereinafter the *DOT*) list financial analyst as SVP (Specific Vocational Preparation) 8 and includes a copy of a website¹² stating the following:

TITLE(s): INVESTMENT ANALYST (FINANCIAL; INSURANCE) alternate titles: securities analyst;

securities-research analyst Analyzes financial information to forecast business, industry, and economic conditions, for use in making investment decisions: Gathers and analyzes company financial statements, industry, regulatory and economic information, and financial periodicals and newspapers. Interprets data concerning price, yield, stability, and future trends of investments. Summarizes data describing current and long term trends in investment risks and economic influences pertinent to investments. Draws charts and graphs to illustrate reports, using computer. Recommends investment timing and buy-and-sell orders to company or to staff of investment establishment for advising clients. May call brokers and purchase

¹¹ See <http://www.onetonline.org/link/summary/13-2051.00> (last visited April 6, 2015).

¹² See <http://www.>

investments for company, according to company policy. May recommend modifications to management's investment policy. May specialize in specific investment area, such as bond, commodity, equity, currency, or portfolio management.

GOE: 11.06.03 STRENGTH: S GED: R5 M5 L5 SVP: 8 DLU: 89

The petitioner states that an SVP rating of 8 indicates "over four years and up to ten years" of preparation "which is associated with obtaining a Master's degree (or higher) for professional occupations."

We find that the *DOT* does not support the assertion that assignment of an SVP rating of 8 is indicative of a specialty occupation. This conclusion is apparent upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specific Vocational Preparation (SVP) rating system.¹³ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

¹³ The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

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

As we discussed earlier, the evidence in the record of proceeding does not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the

particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

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 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 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.

Here and as already discussed, the evidence of record does not establish that the petitioner's 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. The petitioner submits the above-referenced letter from [REDACTED] who claims that she is a "Charterholder of the [REDACTED] and states that "in order to qualify or enroll in their certification program, applicants must have completed or be in the final year of a bachelor's degree program." However, the [REDACTED] website indicates that "four years of professional work experience (which does not have to be investment related)" or "a combination of professional work and college experience that totals at least four years" would also qualify individuals to enroll in the [REDACTED] program.¹⁴ Therefore, [REDACTED] assertion that a professional organization requires a bachelor's degree in order to qualify for its certification program is unsupported. However, even if her assertion was supported, we note that a non-specific bachelor's degree requirement would not satisfy the regulatory requirements of specialty occupation. While the assertions of [REDACTED] with regard to an industry-wide recruiting and hiring standard are acknowledged, the record contains no evidence to support their assertions. Again going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. Furthermore, both [REDACTED] state that the data analyst position requires a bachelor's degree in Business Administration, Finance, or Economics. As discussed earlier, the claimed requirement of a degree in such major as "Business Administration" for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, 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* at 147.

¹⁴ See [http://www.\[REDACTED\]](http://www.[REDACTED])
(last visited April 6, 2015).

We will next address the job advertisements submitted by the petitioner. The record of proceeding contains copies of eight job advertisements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that the petitioner's reliance on the job announcements is misplaced.

In the Form I-129 petition, the petitioner describes itself as an "[o]nline [s]ervices that [p]rovides [c]onsumer [i]nvestors with [i]nformation about [s]tock and [f]und [i]nvesting and [e]xisting [i]nvestment [p]ortfolios" company established in [REDACTED] with 2 employees. Although requested in the Form I-129 petition, the petitioner did not state its gross or net annual income. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 52399 – "All Other Financial Investment Activities."¹⁵ The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises establishments primarily engaged in acting as agents or brokers (except securities brokerages and commodity contracts brokerages) in buying and selling financial contracts providing financial investment activities (except securities and commodity exchanges, portfolio management, and investment advice).

Illustrative Examples:

Bank trust offices
Fiduciary agencies (except real estate)
Escrow agencies (except real estate)
Stock quotation services

See U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, "52399 Other Financial Investment Activities," [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=52399&search=2012 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=52399&search=2012%20NAICS%20Search) (last visited April 6, 2015).

For the petitioner to establish that an organization operating within the same industry is also "similar," it must demonstrate that the petitioner and the organization share the same general characteristics. 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. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the

¹⁵ 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 U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited April 6, 2015).

petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review, the record does not demonstrate 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 (3) located in organizations that are similar to the petitioner.¹⁶

For example, in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner provided copies of job advertisements. However, we find that the petitioner's reliance on these job postings is misplaced, as the advertising organizations do not appear to be both (1) in the petitioner's industry, and (2) similar to the petitioner. More specifically, the advertisements include:

- (financial information and software analytics firm);
- (facilities and real estate management solutions);¹⁷
- (developer and publisher of free-to-play games for smartphones and tablets);
- (government entity);
- (software company);
- (home health care company); and
- food/restaurant).

The petitioner did not state which aspects or traits (if any) it shares with the advertising organizations. Without further information, the advertisements appear to have been placed by organizations that are not both (1) in the petitioner's industry and (2) similar to the petitioner, and the petitioner has not provided any probative evidence to suggest otherwise.

The record also contains an advertisement from a staffing company, for which little or no information regarding the hiring employers is provided. Consequently, there is insufficient information regarding this employer's business operations to conduct a legitimate comparison to the petitioner's operations.

Moreover, these advertisements do not appear to be for parallel positions. More specifically, the position with requires "4+" years of related financial experience; the position with the requires "[t]wo years of increasingly responsible professional experience in accounting, budgeting, and financial analysis, preferably in a public agency;" the position with requires "1-2 years of FP&A experience;" the position with requires a minimum of four years of experience in and analytical position; and the position with requires 3-5+ years of relevant experience. The petitioner designated the

¹⁶ See 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

¹⁷ See <http://www.> (last visited April 6, 2015)

proffered position on the LCA as a Level I position, and as stated earlier, individuals performing duties at this wage level positions are expected to have only a basic understanding of the occupation and perform routine tasks that require limited, if any, exercise of judgment. The advertised positions appear to be for more senior positions than the proffered position. Thus, the petitioner has not established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.

It must be noted that even if all of the job postings indicated that a requirement of 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. *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 selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

Thus, based upon a complete review of the record, we find that the evidence of record does not establish that a requirement for at least a bachelor's 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. Thus, for the reasons discussed above, the evidence of record does not satisfy 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 the instant case, the evidence of record does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the data analyst position, as described, necessitates the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Financial Analysts"

occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

More specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even essential, in performing certain duties of a data analyst 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 petitioner's proffered position. As stated earlier, the claimed requirement of a degree in a major such as "Business Administration" for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation.¹⁸

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, we incorporate by reference and reiterate our earlier discussion that the LCA indicates that the position is a low-level (entry-level) position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to perform routine tasks that require limited, if any, exercise of judgment. Accordingly, given the *Handbook's* indication that typical positions located within the "Financial Analysts" occupational category do not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited exercise of judgment *would* contain such a requirement.

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique, as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁹ Even a position involving a

¹⁸ Counsel's arguments that a bachelor's degree in business administration "is not a generalized degree" and that it "relates directly and closely to the position in question" are acknowledged. However, we do not agree. USCIS has consistently stated that, 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* at 147.

While counsel's claims regarding the experience requirements for the position are similarly acknowledged, they are not persuasive, either. As noted, the petitioner submitted an LCA certified for a Level I wage, which, according to DOL, is appropriate for research fellows, workers in training, and interns. The claim that a great degree of experience is required for this position is therefore not credible.

¹⁹ For additional information regarding wage levels as defined by DOL, see U.S. Dept of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev.

Level II wage, which would exceed the complexity of the one proposed by the petitioner, would involve only "moderately complex tasks that require limited judgment."²⁰

Finally, we observe that the petitioner has indicated that the beneficiary's experience and his educational background make him qualified for the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the proposed duties, if any, would render the proffered position so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Again, the petitioner did not demonstrate 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.

For all of these reasons, it cannot be concluded that the evidence of record satisfies 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. We normally review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that the imposition of a degree requirement by the petitioner is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

We note that the petitioner claims repeatedly that the duties of the proffered position can only be employed by a degreed individual. While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation.²¹ 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

Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

²⁰ *Id.*

²¹ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated on the LCA that the proffered position is a comparatively low, entry-level position relative to others within its occupation.

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 degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). The record does not contain documentary evidence demonstrating a hiring history of the petitioner. As the record of proceeding 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, it does not satisfy 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.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position's duties. In other words, the proposed duties have not been described with sufficient specificity to show that their nature is more specialized and complex than financial analyst positions whose duties are not of a nature so specialized and complex that their performance requires knowledge usually associated with a degree in a specific specialty. In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Financial Analysts" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions, and the record indicates no factors that would elevate the duties proposed for the beneficiary above those discussed for similar positions in the *Handbook*. With regard to the specific duties of the position proffered here, we find that the record of proceeding lacks sufficient, credible evidence establishing that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or the equivalent.

Moreover, we incorporate our earlier discussion regarding the wage-level designation on the LCA, which is appropriate for duties whose nature is less complex and specialized than required to satisfy this criterion. We find that both on its own terms and also in comparison with the two higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I (entry-level), the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by DOL states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who

have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].²²

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Id.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, we note the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years

²² 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 (last visited April 6, 2015).

of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

Id.

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Id.

Here, we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission, the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, 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 already noted, by virtue of this submission, the petitioner effectively attested that the proffered position is a low-level (entry-level) position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, 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).

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

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." 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. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.²³ 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 us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

As the evidence of record does not satisfy 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 on this basis.

²³ 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 us. 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 us in our *de novo* review of the matter.

IV. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the director's decision will not be disturbed.²⁴

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.

²⁴ As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition. However, we will note for the record that if the petitioner is able to overcome all the issues discussed in this decision, USCIS would need to explore and resolve the following issues before approving the petition: (1) whether the beneficiary is qualified to perform the duties of a specialty occupation; and (2) whether the LCA submitted by the petitioner corresponds to and supports the petition.