



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **APR 28 2015** OFFICE: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

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

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

Thank you

Ron Rosenberg  
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a one-employee finance business established in [REDACTED]. In order to employ the beneficiary in what it identifies as a part-time position in the "Personal Financial Advisors" occupational category, with "Associate Wealth Management Advisor" as its job title,<sup>1</sup> the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on July 1, 2014, concluding that the evidence of record did not establish that the proffered position is a specialty occupation. The director further determined that the petitioner had not established that the beneficiary was maintaining a valid nonimmigrant status at the time the instant petition was filed.<sup>2</sup>

The record of proceeding contains the following: (1) the Form I-129 and supporting documentation; (2) the director's Request for Evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision denying the petition; (5) the Form I-290B, a brief, and supporting documentation; (6) our RFE; and (7) the petitioner's response to our RFE.

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

<sup>1</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O\*NET/OES) Code 13-2052, the associated Occupational Classification of "Personal Financial Advisors," and a Level I prevailing wage rate.

<sup>2</sup> The regulations do not provide for an appeal from a denial of an extension of stay filed on Form I-129. *See* 8 C.F.R. § 214.1(c)(5). In similar fashion, the regulations do not provide for an appeal from a denial of a request to change status. *See* 8 C.F.R. § 248.3(g).

Moreover, the authority to adjudicate appeals is delegated to us by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective Mar. 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). We exercise appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003), with one exception: petitions for approval of schools under 8 C.F.R. § 214.3 are now the responsibility of U.S. Immigration and Customs Enforcement. Appeals from denials of requests to change status and appeals from denials of requests for extension of stay are not listed as matters over which we have jurisdiction.

We therefore have no jurisdiction over the director's second ground for denial and will not address it further.

I. EVIDENTIARY STANDARD ON APPEAL

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

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

\* \* \*

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

\* \* \*

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

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

*Id.*

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved.

Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence submitted in support of this petition, we find that the record does not contain sufficient

relevant, probative, and credible evidence to lead us to believe that it is "more likely than not" or "probably" true that the proffered position qualifies as a specialty occupation.

## II. PROCEDURAL HISTORY

In the petition, signed on March 7, 2014, the petitioner indicated that it is seeking the beneficiary's services as an associate wealth management advisor on a part-time basis at a rate of pay of \$23,972 per year. In his March 7, 2014 cover letter, counsel described the petitioner as follows:

[The petitioner] joined [redacted] a district network office of [redacted] office, where he provided individuals and their families with a variety of financial objectives ranging from Risk Management, Wealth Accumulation, Education Funding, Retirement Solutions, and Long Term Care and Disability Income Insurance. [redacted] is the underlying product and service backbones of [the petitioner]. The underlying is the integral component that is imbedded in the infrastructure of [redacted] services.

As a sole proprietorship, the petitioner provides specialized services and thought leadership both locally in the greater [redacted] area, and nationally, to other district offices within the [redacted] network. The business focuses on connecting with people and helping them achieve financial security.

Counsel described the proposed duties as follows:

The position of Associate Wealth Management Advisor at [the petitioner's] office requires the theoretical and practical application of a certain business disciplines, such as accounting, which is indisputably a body of highly specialized knowledge. The Associate Wealth Management Advisor position, which is part-time, requires that [the beneficiary] lead meetings with clients to determine their current income, expenses, insurance coverage, tax status, financial goals and objectives, risk tolerance, or other information needed to develop a financial plan and strategies; provide answers to clients' questions about the details of financial plan; analyze financial information obtained from clients; implement financial planning recommendations and strategies in insurance coverage, investment planning, as well as other related areas; perform regularly scheduled reviews of clients' accounts and plans, contact clients periodically to determine changes in their financial status, and indicate need for plan reassessment if necessary; manage client portfolios and keep client plans up to date; actively recruit and maintain client basis.

In addition to counsel's letter referenced above, counsel submitted a document entitled "[redacted]"<sup>3</sup>

<sup>3</sup> This document does not appear to have been prepared by the petitioner. Providing job duties for a proffered position from an unidentified source is generally not sufficient for establishing H-1B eligibility. That is, while this type of description may be appropriate when defining the range of duties that may be

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 9, 2014. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The petitioner was also asked to submit one of three identification documents referenced by the director.

On May 22, 2014, counsel for the petitioner responded to the RFE. Counsel submitted an excerpt from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* pertaining to Personal Financial Advisors. Counsel also submitted copies of multiple job posting for financial advisor or planner positions. Counsel also submitted an excerpt from the Occupational Information Network (O\*NET) regarding Personal Financial Advisors. In addition, counsel submitted a copy of a Bachelor of Arts degree for another associate wealth management advisor employed by the petitioner. Counsel also submitted evidence of the petitioner's date of birth. Finally, counsel submitted a letter from the petitioner further detailing the proffered position. As stated by the petitioner,

I am a Wealth Management Advisor under [REDACTED] based on a contractual relationship. This allows me to bring personnel into [REDACTED] to work for me where I am the employer (under my own EIN). This applies to all Wealth Management Advisors under the [REDACTED] umbrella.

\* \* \*

There is no written requirement for a bachelor's degree from [REDACTED]. However, since Associate Wealth Management Advisors are employees of individual contractors like me, the requisite of a bachelor's degree is left solely to my discretion. Given the fact that the position requires the person to be state life and health insurance licensed as well as securities and investment advisor licensed (Series 7 & 66),<sup>4</sup> I absolutely require that the position requires at a minimum a bachelor's degree for consideration given the scope of the financial services that the position offers.

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performed within an occupational category, it cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description does not adequately convey the substantive work that the beneficiary will perform for the petitioner on a day-to-day basis. In establishing a position as qualifying 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.

<sup>4</sup> The evidence of record does not establish that the beneficiary possesses these credentials.

Moreover, as I am building up my own team now and in the coming years, [the beneficiary's] role as my Associate Wealth Management Advisor is more comprehensive compared to [other employee of the petitioner's]. I'd like to consider [the beneficiary] my partner in practice. Besides these typical tasks [the other employee of the petitioner's] is conducting, [the beneficiary] will be more actively involved in assisting me on analyzing clients' financial needs, as well as analyzing and constructing investment portfolios. [The beneficiary's] concentration in his master's education is Corporate Finance and Investment, which grants him the exact specialties needed to perform such tasks. And as an MBA, he can also contribute greatly to the strategic building of my team.

As a US sole proprietor who is building his team, I believe [the beneficiary's] being a part of my team is crucial for the growth of the practice. What I need from him is not just some basic skills everyone can easily obtain as a man power, but his knowledge in financial investment and experience in the financial service industry, as well as strategic management skills, for which I don't believe any individual without at least a bachelor's degree can easily obtain.

The director reviewed the information provided by the petitioner and counsel to determine whether the petitioner had established eligibility for the benefit sought. On July 1, 2014, the director denied the petition. On appeal, counsel submits a brief and supporting documentation.

### III. SPECIALTY OCCUPATION ISSUE

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

#### A. Law

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

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

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

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

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

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

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

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

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

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

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

## B. Preliminary Findings

### 1. Regarding the Position and its Duties, as Described in the Record of Proceeding

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

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

Analyzing and constructing investment portfolio

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of the investment portfolio that the beneficiary would have to analyze and construct. Likewise, the record does not clarify the substantive work and associated applications of specialized knowledge that would be involved in the referenced duty. Thus, we conclude that, as generally described as all of the elements of the constituent duties are, they do not - even in the aggregate - establish the nature of the position or the nature of the position's duties as more complex, specialized, and/or unique than those of personal financial advisor positions that do not require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent.

In addition, we find that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a Level I wage, 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.

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].

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.flcdatcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf) (last visited Apr. 22, 2015).

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 the

Level II wage-rate itself is associated with performance of only "moderately complex tasks that require limited judgment," is indicative of the relatively low level of complexity imputed to the proffered position by virtue of the petitioner's 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 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.*

## 2. Regarding the Position's Educational Requirements

We further find that the petitioner's claim that a bachelor's degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the

position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (1st Cir. 2007).

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is an admission that the proffered position is not in fact a specialty occupation.

The material deficiencies in the evidentiary record are decisive in this matter and they conclusively require that the appeal be dismissed. However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in the record that would also require dismissal of this appeal. For efficiency's sake, we hereby incorporate the above discussion and analysis into each of the bases in this decision for dismissing the appeal.

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

Having made the above preliminary findings, we turn now to the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

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

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>5</sup> As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Personal Financial Advisors" occupational category, and we will accordingly analyze the proffered position as such.

The *Handbook* states the following with regard to the typical duties of personal financial advisors:

Personal financial advisors typically do the following:

- Meet with clients in person to discuss their financial goals

<sup>5</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. This office's references to the *Handbook* are from the 2014-15 edition available online.

- Explain the types of financial services they provide to potential clients
- Educate clients and answer questions about investment options and potential risks
- Recommend investments to clients or select investments on their behalf
- Help clients plan for specific circumstances, such as education expenses or retirement
- Monitor clients' accounts and determine if changes are needed to improve account performance or to accommodate life changes, such as getting married or having children
- Research investment opportunities

Personal financial advisors assess the financial needs of individuals and help them with decisions on investments (such as stocks and bonds), tax laws, and insurance. Advisors help clients plan for short-term and long-term goals, such as education expenses and retirement. They recommend investments to match the client's goals. They invest clients' money based on the clients' decisions. Many also provide tax advice or sell insurance. Although most planners offer advice on a wide range of topics, some specialize in areas such as retirement or risk management (evaluating how willing the investor is to take chances and adjusting investments accordingly).

Many personal financial advisors spend a lot of time marketing their services, and they meet potential clients by giving seminars or through business and social networking. Networking is the process of meeting and exchanging information with people, or groups of people, who have similar interests.

After financial advisors have invested funds for a client, they and the client receive regular investment reports. They monitor the client's investments and usually meet with each client at least once a year to update the client on potential investments and to adjust the financial plan based on the client's circumstances or because investment options may have changed.

Many personal financial advisors are licensed to directly buy and sell financial products, such as stocks, bonds, annuities, and insurance. Depending on the agreement they have with their clients, personal financial advisors may have the client's permission to make decisions about buying and selling stocks and bonds.

**Private bankers** or **wealth managers** are personal financial advisors who work for people who have a lot of money to invest. These clients are similar to institutional investors (commonly companies or organizations), and they approach investing differently than the general public. Private bankers manage a collection of investments, called a portfolio, for these clients by using the resources of the bank, including teams of financial analysts, accountants, and other professionals.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Personal Financial Advisors," <http://www.bls.gov/ooh/business-and-financial/personal-financial-advisors.htm#tab-2> (last visited Apr. 22, 2015).

We find that the proffered position and its constituent duties as described in the record of proceeding generally comport with a position within the Personal Financial Advisors occupational group as discussed in the *Handbook*. Thus, we look to see what the *Handbook* relates about educational requirements for entering this occupational category.

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

Personal financial advisors typically need a bachelor's degree. Although employers usually do not require a specific field of study for personal financial advisors, a degree in finance, economics, accounting, business, mathematics, or law is good preparation for this occupation. Courses in investments, taxes, estate planning, and risk management are also helpful. Programs in financial planning are becoming more available in colleges and universities.

*Id.* at <http://www.bls.gov/ooh/business-and-financial/personal-financial-advisors.htm#tab-4> (last visited Apr. 22, 2015).

The *Handbook's* information regarding entrance into this occupational category does not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. The *Handbook* states that "employers usually do not require a specific field of study for personal financial advisors . . . ." Therefore, the *Handbook* does not support this particular position as normally requiring a specialty occupation level of education, that is, at least a U.S. bachelor's degree *in a specific specialty*, or its equivalent. Further, although the *Handbook* indicates that a bachelor's degree is typically required, it also states that degrees in disparate fields such as mathematics or law are "good preparation for this occupation." In addition to recognizing degrees in disparate fields,

the *Handbook* also states that a “business” degree is also “good preparation.” Although a general-purpose bachelor's degree, such as a degree in business, 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. As the *Handbook* indicates that working as a personal financial advisor does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

Further still, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of investment strategy and tax effects, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Next, we are not persuaded by counsel's reference to the Occupational Information Network (O\*NET OnLine), in the response to the director's RFE. O\*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O\*NET OnLine's pertinent Job Zone designations makes no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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. Also, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the references made by counsel to O\*NET OnLine are of little evidentiary value to the issue presented on appeal.

When, as here, the *Handbook* does not support the proposition that a proffered position of “Associate Wealth Management Advisor” located within the “Personal Finance Advisors” occupational category 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.”

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

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

Next, we find that the job-vacancy announcements submitted by counsel do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. That is, neither the job-vacancy announcements themselves nor any other evidence within the record of proceeding establish that those advertisements pertain to positions that are parallel to the proffered position, as required for evidence to merit consideration under the first alternative prong is position. In this regard, we make several specific findings.

First, while some of the advertisements bear the title "Financial Advisor," it is the nature of the duties comprising the advertised positions that would determine whether those positions are in fact parallel to the proffered position. However, we see that the duty descriptions of the advertised positions and their constituent duties are not substantially similar to the proffered position's duties as stated in the petitioner's letters. We also see that the extensive experience that some of the job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position.<sup>6</sup> So, the job-vacancy advertisements do not establish that the advertised positions are "parallel" to the proffered position.

<sup>6</sup> By way of example, the [REDACTED] advertisement for a "Financial Advisor" states "Three or more years of experience in a financial sale position." The [REDACTED] advertisement for a "Financial Advisor" states "Previous 5 years of work experience in client acquisition, or sales, or leadership, or entrepreneur work in a fast paced work environment." The [REDACTED] advertisement for a "Private Client Direct Investment Advisor" states "Prior experience providing complex investment solutions to affluent or high net worth individuals and/or families." The extensive experience that these job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position, which the petitioner described on the LCA as a Level I position.

In addition, the submitted advertisements do not all specify a requirement for a bachelor's or higher degree in a specific specialty or its equivalent. By way of example, the [REDACTED] advertisement for a "Financial Advisor" only states "Four-year college degree from an accredited institution" without any specification of any particular academic major. Likewise, the advertisement for a "Financial Advisor" in [REDACTED] Texas, posted on [REDACTED] specifies a "BA, BS, Graduate Degree or equivalent work experience" with no indication that the bachelor's degree must be in any particular area or equivalent to a bachelor's or higher degree in a specific specialty. In addition, the [REDACTED] advertisement for a "Private Client Direct Investment Advisor" only states "Bachelor's degree required" as the educational requirement.

As the submitted vacancy-announcements are not probative evidence toward satisfying this criterion, further analysis of their content is not necessary.

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

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

The statements of counsel and the petitioner with regard to the claimed complex and unique nature of the proffered position are acknowledged. However, a review of the record of proceeding indicates that the petitioner has not credibly demonstrated the duties the beneficiary will be responsible to perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. We here refer the petitioner back to our comments and findings with regard to the generalized and relatively abstract terms in which the proposed duties and the position that they are said to comprise were presented. They simply do not establish a level of complexity or specialization that would elevate the proffered position above other positions located within the "Personal Financial Advisors" occupational category that the *Handbook's* information indicates can be performed by persons without a bachelor's or higher degree, or the equivalent, in a specific specialty.

Further, as was also noted above, the LCA submitted in support of the visa petition was certified for a Level I personal financial advisor position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the duties of a personal financial advisor. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* indicates that not all personal financial advisor positions require such a degree.

The petitioner has indicated that the beneficiary's educational background will assist him in carrying out the duties of 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 qualifies as a specialty occupation. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment.

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

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

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

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that the imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<sup>7</sup>

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's May 9, 2014 RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. The RFE included the following detailed request for such documentation:

<sup>7</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner submitted an LCA that had been certified for a Level I wage-level, which is appropriate for use with a comparatively low, entry-level position relative to others within the same occupation.

If you publicized the job opening, submitting tear sheets or other advertising documentation may help establish the educational requirements for the proffered position of associate wealth management advisor

If you have previously employed individuals in the position of associate wealth management advisor, submit documentary evidence such as W-2 Forms and copies of degrees and transcripts.

Thus, the director provided the petitioner with an additional opportunity to establish a history of recruiting and hiring for the proffered position only individuals with a bachelor's or higher degree in a specific specialty, or the equivalent. In response to the RFE, the petitioner stated that "this job opening was not publicized" but that it "currently employs an individual in the position of associate wealth management advisor" The petitioner identified this person as [REDACTED], who "serves as an Associate Wealth Management Advisor" and "holds a Bachelor's degree from [REDACTED]" A copy of Mr. [REDACTED] Bachelor of Arts degree from [REDACTED] was submitted.

The petitioner did not provide any substantive information corroboratively detailing Mr. [REDACTED] actual job duties, his pay level, and other relevant factors such as when Mr. [REDACTED] employment in the position began; whether he had his degree by that time; and the educational requirements, if any, that the petitioner may have specified in recruiting efforts for the job in which Mr. [REDACTED] is now employed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Thus, we accord little to no weight to the petitioner's unsubstantiated assertions about Mr. [REDACTED]

Moreover, the petitioner should note that we do not regard one previous hire as establishing the course of consistent recruiting and hiring practices over time that would establish the claimed recruiting and hiring degree-requirement as something that the petitioner normally imposes, as is required by this criterion.

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

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

As reflected in this decision's earlier discussions and findings regarding record's duty descriptions - which we hereby incorporate into this present analysis - the nature of the proposed duties as described in the record of proceeding do not show the level of specialization and complexity required to satisfy this criterion. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and explanation to establish the

substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or the equivalent. By the same token and as evident in the duty descriptions themselves, the nature of the proposed duties are not developed with sufficient substantive detail to distinguish them from the nature of the duties of positions within the Personal Financial Advisors occupational group whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

Additionally, we incorporate into the analysis of this criterion this decision's earlier comments and finding that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, 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.

For the reasons discussed above, we conclude that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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

#### D. Regarding Decisions Referenced by Counsel

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 not met its burden to 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*.<sup>8</sup> 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. See also *Health Carousel, LLC v. U.S. Citizenship & Immigration Services*, \_\_\_ F. Supp. 2d \_\_\_ (S.D. Ohio 2014) (agreeing with AAO's analysis of *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*).

Counsel also cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). In *Tapis Int'l v. INS*, the U.S. district court found that, while the former INS was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for "various combinations of academic and experience based training." *Id.* at 176. The court elaborated that "[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience." *Id.* at 177.

We agree with the district court judge in *Tapis Int'l v. INS*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty *or its equivalent*, and that this language indicates that the degree does not have to be a degree in a single specific specialty. Once again, 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

<sup>8</sup> It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to this office. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

degree in two disparate fields 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) (emphasis added).

Moreover, we also agree that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. We do not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. Again, in this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent as the minimum for entry into the occupation as required by the Act.

In addition, the district court judge does not state in *Tapis Int'l v. INS* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor's degree in that field. In other words, we do not find that *Tapis Int'l v. INS* stands for either (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. at 560 (stating that "[t]he facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]").

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the

former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.* In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis Int'l v. INS*.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis Int'l v. INS*. As detailed above, 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.

#### IV. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. Thus, the appeal will be dismissed, and the petition will be denied.<sup>9</sup>

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.

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<sup>9</sup> As these issues preclude approval of the petition, we will discuss any of the additional deficiencies we have observed in the record of proceeding.