U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C-L-, INC.

DATE: DEC. 9, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a freight forwarding and logistics company, seeks to temporarily employ the Beneficiary as a "logistics analyst" under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.[1]

II. SPECIALTY OCCUPATION

A. Legal Framework

For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the Petitioner must establish that the employment it is offering to the Beneficiary meets the applicable statutory and regulatory requirements of a specialty occupation.

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

> (A) theoretical and practical application of a body of highly specialized knowledge, and

[1] We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

(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 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 beneficiaries 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 Beneficiary, 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. The Proffered Position

The Petitioner described the position in its support letter dated December 3, 2014, as follows:

> The position we have offered to [the Beneficiary] is as a Logistics Analyst. Because of the complexity and specialized nature of the particular job duties for which [the Beneficiary] will be responsible, it is quite clear that this position requires specialized knowledge; that is, requires someone who has studied the theories and concepts presented in a curriculum of at least the baccalaureate level in Business Administration with a concentration in Marketing and Management.
>
> The job duties will include:
>
> 1. (20% - estimated percentage of time to be spent on this task) Research, then evaluate, analyze and interpret data maintained in complex, multi-user databases, taking into account constantly changing factors as to commercial markets and

business variables such as the availability of shipping & transport services, maintainability, reliability, supply chain management, strategic sourcing or distribution, supplier management, and transportation;

2. (15% - estimated percentage of time to be spent on this task) Develop or maintain business models for logistics uses, such as cost estimating or demand forecasting;
3. (8% - estimated percentage of time to be spent on this task) Evaluate and understand the business needs of the customer shippers and buyers, so that the Logistics Analyst can provide the customers with appropriate, timely advice as to projected costs and product arrival schedules. (This is critical information for the sellers and buyers so they can properly calculate total manufacturing and shipping costs in order to set product pricing, and so they can guarantee delivery of the product in time to meet the buyers' schedules. Incorrect pricing, and missed deliveries – especially for seasonal products – can cost the sellers and/or buyers losses totaling many thousands of dollars.)
4. (5% - estimated percentage of time to be spent on this task) Work closely with customers to develop and maintain an in-depth understanding of how their particular business functions, in order to advise them in the best manner possible as to logistics;
5. (5% - estimated percentage of time to be spent on this task) Educate the customers about possible variables and factors which can affect delivery and cost, so the customers can utilize that information in the business projections calculations;
6. (1% - estimated percentage of time to be spent on this task) Utilize customer knowledge to develop additional or new opportunities for defined route;
7. (2% - estimated percentage of time to be spent on this task) Provide ongoing analyses in areas such as transportation costs, parts procurement, back orders and/or delivery processes;
8. (5% - estimated percentage of time to be spent on this task) Prepare analytical reports using multiple logistics performance measurements;
9. (5% - estimated percentage of time to be spent on this task) Confer with logistics management teams to determine ways to optimize service levels, maintain supply-chain efficiency, while minimizing costs – to [the Petitioner] as well as to the customer-shipper;
10. (2% - estimated percentage of time to be spent on this task) Remotely monitor the flow of vehicles and carefully track shipments' inventory in order to reduce or eliminate loss;
11. (2% - estimated percentage of time to be spent on this task) Use Web-based logistics information systems to track vehicles or containers and to track product flow from origin to final delivery;
12. (10% - estimated percentage of time to be spent on this task) Recommend mprovements to existing or planned logistics processes;

13. (5% - estimated percentage of time to be spent on this task) Qualify inquiries/bids against target market, core competencies, revenue potential, company capabilities, and projected business forecast;
14. (5% - estimated percentage of time to be spent on this task) Provide guidance to sales staff as to worldwide markets and as to the ever-changing market factors in various regions throughout Asia, the Middle East, Europe, South America and elsewhere;
15. (10% - estimated percentage of time to be spent on this task) Ensure the Trade Lane Development Team has the updated relevant market information and activities for business planning and for evaluations of business expansion into new, profitable markets.

The Petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The Petitioner indicated that the proffered position corresponds to the occupational category "Logisticians" with SOC (ONET/OES) code 13-1081.

C. Analysis

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

We will first discuss the proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

USCIS recognizes the U.S. Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[2] We reviewed the section of the *Handbook* covering "Logisticians," including the section entitled "How to Become a Logistician," which states the following:

> Although an associate's degree may be sufficient for some logistician jobs, a bachelor's degree is typically required for most positions. Work experience in a related field is helpful for jobseekers.
>
> **Education**
>
> Logisticians may qualify for positions with an associate's degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who

[2] All references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

> have at least a bachelor's degree. Many logisticians have a bachelor's degree in business, industrial engineering, process engineering, or supply chain management.
>
> Bachelor's degree programs often include coursework in operations and database management, decisionmaking, and system dynamics. In addition, most programs offer courses that train students on software and technologies commonly used by logisticians, such as radio-frequency identification (RFID).
>
> **Licenses, Certifications, and Registrations**
>
> Logisticians can obtain certification through the American Society of Transportation and Logistics (ASTL) or the International Society of Logistics (SOLE). The certification offered by each of these organizations typically requires a combination of education, experience, and passing an exam. Although not required, certification can demonstrate professional competence and a broad knowledge of logistics.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Logisticians, available on the Internet at http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4 (last visited Dec. 4, 2015).

As noted, the *Handbook* specifically states that logisticians "may qualify for positions with an associate's degree." Moreover, the *Handbook* further reports that for positions which do require a bachelor's degree, there is no requirement for a degree in a specific specialty. The *Handbook* states that many logisticians have degrees from disparate fields such as business (with no further specialization), industrial engineering, process engineering, or supply chain management. Neither finding supports the proffered position as a specialty 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 seemingly disparate fields, such as business (with no specialization) and industrial 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.[3] Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not done so here.

[3] Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than

Moreover, the requirement of a bachelor's degree in business 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 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, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (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 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. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).[4]

Therefore, the *Handbook*'s recognition that either an associate's degree or a general, non-specialty bachelor's degree in a wide variety of fields is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a logistician 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 particular position proffered here as being a specialty occupation.

The narrative of the *Handbook* further reports that some employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for logisticians to achieve the ASTL or SOLE. According to the *Handbook*, the credential is granted by ASTL or SOLE for those with a combination of education and experience, and who also pass an exam.

Thus, the *Handbook* does not support the claim that the "Logisticians" occupational category is one

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one closely related specialty. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

[4] A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did (which it does not), to satisfy the first criterion, the Petitioner must provide evidence to support a finding that the particular position proffered would normally have such a minimum, specialty degree requirement or its equivalent.

In that regard, we note that the Petitioner made inconsistent statements regarding the requirements for the proffered position. For example, as mentioned above, in the support letter dated December 3, 2014, the Petitioner stated that it normally requires a bachelor's degree in business administration with a concentration in marketing and management. In response to the RFE, the Petitioner asserts that "our Logistics Analyst position is so specialized in its responsibilities and assignments that it requires a person with at least a baccalaureate degree in Business Administration with a focus on Management in the area of Logistics." On appeal, the Petitioner asserts that it requires "someone with a baccalaureate degree and demonstrated experience in the logistics industry."

Nor are we persuaded by the evaluations prepared by Associate Professor of Supply Chain Management at and Assistant Professor in the Department of Supply Chain Management and Marketing Sciences at As a preliminary matter, we note that the structure and content of the two evaluations are nearly identical to one another, which diminishes their probative value.[5]

Nor does either author discuss the duties of the proffered position in any substantive detail; to the contrary, they quoted the duties of the position directly from the support letter that the Petitioner submitted in support of the H-1B petition. The degree to which they analyzed these duties, prior to formulating their opinions, therefore, is not clear. In similar fashion, neither author discusses the Petitioner's business operations in substantive detail. Again, when discussing the Petitioner's business operations both authors quoted directly from the support letter. It does not appear that either individual visited the Petitioner's business premises or otherwise communicated with anyone affiliated with the Petitioner as to what the performance of the general list of duties quoted from the Petitioner's earlier letter would actually require. Nor does either author articulate whatever familiarity he may have obtained regarding the particular content of the work products that the Petitioner would require of the Beneficiary. These factors detract further from the probative value of these evaluations.

Finally, we note that neither individual provides any information with regard to studies, treatises, statistical surveys, authoritative industry sources, DOL resources, or any other relevant and

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[5] The use of identical language and phrasing across the two letters suggest that the language in the letters is not the authors' own. *Cf. Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Because the letters appear to have been drafted by someone other than the purported authors, the letters possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

authoritative sources of which he may have specialized knowledge that would merit deference or special weight to the particular opinion offered here.

For all of these reasons, the letters from and carry little evidentiary weight, and they do not establish the proffered position as a specialty occupation.

We may, in our discretion, use advisory opinion statements submitted by the Petitioner as expert testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). 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. *Id.* For efficiency's sake, we hereby incorporate the above discussion regarding the letters into our analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, we are not persuaded by the Petitioner's citations to the *Dictionary of Occupational Titles* (*DOT*). While we acknowledge that the *DOT* has assigned logistics engineers as Specific Vocational Preparation (SVP) 8, 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 SVP rating system.[6] The section reads:

> II. SPECIFIC VOCATIONAL PREPARATION (SVP)
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> 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);

[6] The Appendix can be found at the following Internet site: http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM.

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);

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 qualifying as a specialty occupation.

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The requirement of a baccalaureate or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

Next, we will review the record 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.

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

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

There are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement and no submission of letters or affidavits from firms or individuals that attest that such firms routinely employ only individuals with a degree in a specific specialty.

The Petitioner submitted copies of job advertisements in support of the assertion that the claimed 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, the Petitioner stated that it is a freight forwarding and logistics business with eight employees. The Petitioner also reported its gross annual income as $10.6 million. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 488510.[7] This NAICS code is designated for "Freight Transportation Arrangement." The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows: "[t]his industry comprises establishments primarily engaged in arranging transportation of freight between shippers and carriers. These establishments are usually known as freight forwarders, marine shipping agents, or customs brokers and offer a combination of services spanning transportation modes." *See* U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 488510 – Freight Transportation Arrangement, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last visited Dec. 4, 2015).

For the Petitioner to establish that an organization in its industry is also similar under this criterion of the regulations, it must demonstrate that the Petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside

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

the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner.

We will briefly note that, without more, the job postings do not appear to be from organizations similar to the Petitioner.[8] When determining whether the Petitioner and the 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 Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions parallel those of the proffered position.

In addition, some postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.[9] For instance, although the postings from and state that a degree is necessary, they do not indicate that the degree must be in a specific specialty.

Thus, the advertisements do not indicate that a bachelor's degree in a *specific specialty* (or its equivalent) that is directly related to the duties of the position is required.[10]

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[8] It does not appear that any of the advertisements were placed by companies primarily engaged in arranging transportation of freight between shippers and carriers.

[9] As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. *See* section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

In addition, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty," 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).

[10] It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner does not demonstrate what inferences, if any, can be drawn from these 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). As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the Petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected outweigh the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

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.[11] That is, not every deficit of every job posting has been addressed.

Thus, based upon a complete review of the record, we conclude that the Petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the Petitioner's industry in positions that are (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner. For the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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.

The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty or its equivalent is not required for the proffered position. Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position.

The Petitioner did not establish that its particular position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Therefore, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review a petitioner's past recruiting and hiring practices, as well as information

[11] The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

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

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

The Petitioner claims that this is not the first time it has hired a logistician, and the record contains a copy of a foreign degree which the Petitioner states belongs to another employee holding a position similar to the one proffered here. However, the Petitioner does not explain by what objective standard it has determined this individual's degree equivalent to a U.S. bachelor's degree in a specific specialty. Nor does the Petitioner explain by what objective standard it has determined this individual's degree similar to the educational background of the Beneficiary. Moreover, the Petitioner's varied statements regarding the position's degree requirements undermine any contention that it normally requires a bachelor's degree in a specific specialty, or the equivalent. For all of these reasons, the evidence of record does not satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 in a specific specialty, or its equivalent

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

Upon review of the record of the proceeding, we note that the Petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been credibly developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Therefore, the evidence of record does not establish that the duties which collectively constitute this position are significantly different from those of other logistics analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for logistics analyst positions, including an associate's degrees or a bachelor's degree that is not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The Petitioner claims that its "business operations are extremely complex; [the Beneficiary has] to be able to provide services that comply with the laws and regulations of the various legal systems in the multiple countries where they operate." The Petitioner highlights its services in international commerce, as well as its position as part of an expanding international operation, as distinguishing factors that render the proffered duties as more complex than those normally performed by other Logistics Analysts. However, the Petitioner's explanations are insufficient to establish eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). Specifically, the Petitioner has not sufficiently explained why the proffered duties are so specialized and complex that the knowledge required to perform them are usually associated with a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so specialized and complex. We further note that the Petitioner's assertion that the proffered position qualifies as a specialty occupation is not supported by the position evaluations as these must be disregarded for the reasons outlined previously. Finally, we note that the evidence submitted, which includes the Petitioner's own contradictory statements and the Beneficiary's credentials in addition to the credentials of another Logistics Analyst working for the Petitioner, indicates that the Petitioner actually will accept a variety of degrees for the proffered position, rather than at least a bachelor's degree or its equivalent in a specific specialty.

The Petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. We, therefore, conclude that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

III. PRIOR H-1B APPROVALS

The Petitioner notes that USCIS has approved other petitions that had been previously filed on behalf of the Beneficiary. The Director's decision does not indicate whether the prior approvals of the other nonimmigrant petitions were reviewed. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

A prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Tex. A&M Univ. v. Upchurch*, 99 F. App'x 556 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *See La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

IV. CONCLUSION AND ORDER

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.[12]

[12] Since the identified bases for denial are dispositive of the Petitioner's appeal, we will not address any of the additional grounds of ineligibility we observe in the record of proceeding.

ORDER: The appeal is dismissed.

Cite as *Matter of S-C-L-, Inc.*, ID# 14690 (AAO Dec. 9, 2015)