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



U.S. Citizenship
and Immigration
Services

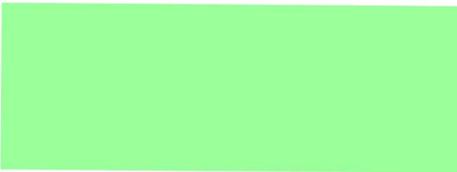


DATE: **FEB 24 2015** Office: CALIFORNIA SERVICE CENTER File:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

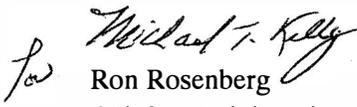


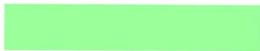
INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office



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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 10, 2014. On the Form I-129 petition, the petitioner claims to be engaged in "audit and consultancy services for advertisers and marketers." In order to employ the beneficiary in a position to which it assigned the job title of "Financial Data Analyst," 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, concluding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Specifically, the director noted that the record as constituted did not establish that a reasonable and credible offer of employment in a specialty occupation position existed for the beneficiary. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the petitioner's 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 notice denying the petition; and (5) the petitioner's Form I-290B (Notice of Appeal) and supporting documentation. We reviewed the record in its entirety before issuing this decision.

For the reasons that will be discussed below, the AAO agrees with the director's decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

I. EVIDENTIARY STANDARD

As a preliminary matter, and in light of counsel's references to the requirement that we apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within its 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 on appeal that the petition at issue be approved.

Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the petitioner has not overcome the basis for the director's denial. Accordingly, the appeal will be dismissed.

II. THE LAW

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.

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 illogical and absurd 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), 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.

III. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated on the Form I-129 petition that it is engaged in audit and consultancy services for advertisers and marketers, and that it seeks the beneficiary's services in a position that it designates as a "Financial Data Analyst" to work on a full-time basis with an annual salary of \$60,000. The petitioner was established in [REDACTED] and has 9 employees.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Financial Analysts" - SOC (ONET/OES) Code 13-2051, at a Level I (entry-level) wage.

In a letter of support dated March 12, 2014, the petitioner explained that its company "prepares contract compliance audits and risk management assessments to advertising and marketing companies around the world." Regarding the proposed duties of the beneficiary in the proffered position, the petitioner stated as follows:

In the position of Financial Data Analyst, [the beneficiary] will apply accounting principles to analyze and process data used to perform these audits. She will evaluate current data processing, and suggest improvements and implement these changes. Her essential duties and responsibilities will include developing and implementing effective tools to analyze financial data and reporting discrepancies, ensuring audit issues are well defined and root causes are identified.

In addition, she will conduct cash flow analysis of advertising agencies for Fortune 500 Clients, and perform variance analysis for client companies in order to identify variances between invoices billed and checks received.

To carry out her responsibilities, she may evaluate current and historical data to gain insight into a client company's billings and costing methods and compare that data with the contractual terms to perform the audits and write reports and recommendations based on that. She will analyze various data including a client's financial statements to determine its value, create reports, and make recommendations for improvements and increased financial opportunities. She will provide effective financial and data analysis focused on trends affecting the advertising and marketing industries.

The petitioner further stated that the position required a thorough understanding of Generally Accepted Accounting Principles ("GAAP") as well as knowledge of software packages and strong analytical skills. The petitioner claimed that the beneficiary was qualified to perform the duties of the proffered position by virtue of her Master's degree in Business Administration with a concentration in Finance from [REDACTED]

In further support of the petition, the petitioner submitted excerpts from the petitioner's website and copies of the beneficiary's academic credentials.

The director found the initial evidence insufficient to establish eligibility for the benefit requested, and issued an RFE on May 3, 2014. The director request additional information pertaining to the nature of the petitioner's business, the job offered to the beneficiary, and additional information regarding the beneficiary's status as a nonimmigrant.

The petitioner, through counsel, submitted a response to the director's request on June 27, 2014.

The petitioner provided additional details regarding the proffered position in a letter dated June 18, 2014. Specifically, the petitioner stated:

The Financial Data Analyst performs the specific financial analysis which assists the Auditors. With the analyses provided by the Financial Data Analyst, our Auditors are able to more effectively provide observations and recommendations, the core of the audit.

Hiring a Financial Data Analyst has helped the company in its core services, i.e., performing accounting and audit services for contract compliance, performing better and complex analysis aiding in the company's growth, and gaining more projects/clients.

The Financial Data Analyst provides a systematic and independent examination of financial data, statements, records, operations and performances which are then used to create an audit report. For example, she conducts cash flow analysis of advertising agencies for Fortune 500 clients, and performs variance analysis for

client companies in order to identify variances between invoices billed and checks received and write audit reports.

To carry out her responsibilities, the Financial Data Analyst evaluates current and historical data to gain insight into a client company's billings and costing methods and compares that data with the contractual terms to perform the audits and write reports and recommendations based on that. She analyzes various data to determine its value, create reports, and make recommendations for improvements and increased financial opportunities. She provides effective financial and data analysis focused on trends affecting the advertising and marketing industries. Her essential duties and responsibilities also include developing and implementing effective tools to analyze financial data and reporting discrepancies, ensuring audit issues are well defined and root causes are identified.

In further support of eligibility, the petitioner submitted (1) a sworn declaration from the beneficiary accompanied by supporting document with regard to her status; (2) copies of the beneficiary's paystubs; (3) copies of various licenses and permits of the petitioner; (4) copies of the petitioner's payroll records, as well as its state and federal quarterly tax returns; (5) a letter from [REDACTED] the petitioner's Chief Auditing Officer, providing an overview of the petitioner's business as well as supporting documentation, including photographs of the petitioner's offices, an organizational chart and additional charts, and employee lists; and (6) copies of job postings for positions the petitioner claims are similar to the proffered position.

The petitioner also stated that the petitioner's business was currently operated out of a residential property owned by [REDACTED]. The petitioner claimed that the square footage of the worksite was 1,500, but explained that a floor plan for the business could not be supplied due to confidentiality reasons.

The director denied the petition on July 2, 2014, concluding that the petitioner did not establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's denial was based on an incorrect application of law, and submits a brief and additional evidence in support of this contention. In addition to the appeal brief, counsel submits (1) a letter from [REDACTED] Ph.D., submitted for consideration as an expert opinion; (2) job postings for positions the petitioner claims are similar to the proffered position; and (3) an excerpt from the U.S. Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) pertaining to Financial Analysts.

IV. ANALYSIS

We reviewed the record of proceeding in its entirety. To make its determination whether the proffered position qualifies as a specialty occupation, we turn to the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As a preliminary matter, we here state our finding that the evidence of record does not present the proffered position and its constituent duties in sufficient detail to establish either the

substantive nature of the work that the beneficiary would perform in the proffered position or any particular educational or education-equivalent level of any body of highly specialized knowledge in any specific specialty that the beneficiary would have to apply to perform that particular position. Accordingly, the petitioner has not established that the proffered position qualifies as a specialty occupation.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position proffered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

One consideration that is fundamental to the issue of whether a proffered position qualifies as a specialty occupation is whether the petitioner has provided substantive information and supportive documentation showing that the beneficiary would be performing services for the type of position for which the petition was filed.

In the above regard, we note that, in addition to the deficiencies in the job description that we will discuss herein, the petitioner claims that it requires the full-time services of the beneficiary as a financial data analyst for its nine-person business. The petitioner's organizational chart indicates that in addition to the beneficiary, it employs several auditors and an analyst, along with four executive employees and an office manager. However, the record contains little to no evidence demonstrating the nature of the petitioner's claimed consultancy business, such as business invoices for services rendered by any of these employees. In fact, the record contains invoices demonstrating that the petitioner actually hired temporary accounting personnel, yet no evidence was submitted to establish its client base, or to whom it provides its services. Moreover, we note that the petitioner has classified itself as a Certified Public Accounting Office by virtue of its selection of NAICS Code 541211 on the LCA and the Form I-129.¹ We also note the fact that that the petitioner's business operates from a residential dwelling which is not zoned to allow non-residents to provide such business services, and this also renders questionable the actual nature of the petitioner's business and the accuracy of the of the petitioner's claims regarding the proffered position. Absent additional evidence of the petitioner's business dealings, such as evidence that it actually is providing the services claimed in the record, we cannot conclude that the evidence in the record of proceeding establishes that the beneficiary would actually be involved in Financial Data Analyst work.

¹ The petitioner's NAICS classification will be discussed in greater detail *infra*.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

In pertinent part, the *Handbook* states the following with regard to the general duties of positions within the Financial Analysts occupational group:

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

Duties

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

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

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

- Buy-side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent

² The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2014-2015 edition available online.

money managers, and nonprofit organizations with large endowments, such as some universities.

- Sell-side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

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

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

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

The following are examples of types of financial analysts:

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

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

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

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

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last accessed February 18, 2015).

Read in the total context of all of the information in the *Handbook* about the Financial Analysts occupational group, it is clear that the associated research, monitoring, analysis and other functions with regard to a business entity or entities does not refer to activities directed to the

employer that is engaging the services of a financial analyst, but rather business entities that the employer firm is evaluating for potential investment.

Again, the petitioner provides no documentation related to its financial operations or organization that would shed light on the substantive nature, specialization, or complexity of the work to be performed by the beneficiary. Rather, we find that the petitioner describes the proffered position and its duties in relatively abstract terms of generalized functions. Although counsel contends on appeal that the petitioner's line-and-block chart of services and its table of accounting systems was representative of the petitioner's business operations but was not considered by the director, we disagree. These documents shed no light and do not constitute probative evidence that the petitioner is actually conducting the business it claims. Likewise, there is no evidence that, at the time the petition was filed, the petitioner had a legitimate need for a financial data analyst, or that the beneficiary would be performing such duties if the petition were approved. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We further find that neither the descriptions of the proposed duties nor the discussions of the proffered position anywhere in this record of proceeding provide substantial details sufficient to convey either the substantive nature of the matters upon which the beneficiary would work or any particular applications of a body highly specialized knowledge that the beneficiary would have to apply to perform such work.

For adjudicative efficiency and economy, we hereby incorporate these comments and findings into the analysis of each of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), which will follow later in this decision.

Even if the petitioner had established that the proffered position falls into the Financial Analysts occupational category - which is not the case here - the evidence of record is insufficient to establish that such a position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding 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 that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in a position to which it assigned the job title of "Financial Analyst." However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the evidence of 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 evidence in the record of proceeding establishes that performance of the particular proffered 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 as the minimum for entry into the occupation, as required by the Act.

As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Financial Analysts." Although we find that the evidence of record does not establish the proffered position as belonging within this occupational group, we shall address why the evidence of record would not satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) even if the proffered is analyzed as a position within the Financial Analysts occupational group.

We reviewed the information in the *Handbook* regarding the occupational category "Financial Analysts," including the sections regarding the typical duties and requirements for this occupational category.³ However, the *Handbook* does not support a conclusion that this occupation normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Financial Analyst" states the following about this occupational category:

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

Education

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

Licenses, Certifications, and Registrations

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial

³ For additional information regarding the occupational category "Financial Analysts," see U.S. Dept of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Financial Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm> (last accessed February 18, 2015).

analyst positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job. Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst (CFA) certification from the CFA Institute, which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

Advancement

Financial analysts typically start by specializing in a specific investment field. As they gain experience, they can become portfolio managers, who supervise a team of analysts and select the mix of investments for the company's portfolio. They can also become fund managers, who manage large investment portfolios for individual investors. A master's degree in finance or business administration can improve an analyst's chances of advancing to one of these positions.

Important Qualities

Analytical skills. Financial analysts must process a range of information in finding profitable investments.

Communication skills. Financial analysts must explain their recommendations to clients in clear language that clients can easily understand.

Computer skills. Financial analysts must be adept at using software packages to analyze financial data, see trends, create portfolios, and make forecasts.

Decision making skills. Financial analysts must provide a recommendation to buy, hold, or sell a security. Fund managers must make split-second trading decisions.

Detail oriented. Financial analysts must pay attention to details when reviewing possible investments, as small issues may have large implications for the health of an investment.

Math skills. Financial analysts use mathematical skills when estimating the value of financial securities.

To be successful, financial analysts must be motivated to seek out obscure information that may be important to the investment. Many work independently and must have self-confidence in their judgment.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, "Financial Analysts," available on the Internet at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last accessed February 18, 2015).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. Although the

Handbook states that most financial analysts typically need a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be *in a specific specialty*.⁴ Rather, the narrative of the *Handbook* reports that "[a] number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering."

Thus, for the reasons discussed above, the *Handbook* does not support a claim that "Financial Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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).

We note the submission, on appeal, of letter by [REDACTED] Ph.D., proffered as an expert opinion. However, we find [REDACTED] assertions unpersuasive.

[REDACTED] who concludes that the proffered position of Financial Data Analyst is a specialty occupation requiring an individual to possess as least a bachelor's degree or equivalent in Finance or Data Science, does not list any reference materials on which he relies as a basis for his conclusion. Further, the [REDACTED] provides no discussion of any observed objective evidence with regard to the actual operations of the petitioner, but instead appears to restate the proffered position description as provided by counsel.

⁴ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of financial analyst positions require at least a bachelor's degree, it could be said that "most" financial analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

Moreover, [REDACTED] conclusion that the proffered position requires the attainment of a bachelor's degree or its equivalent in Finance or Data Science raises additional questions here regarding the qualifications of the beneficiary for the proffered position. Based on this opinion letter, it appears that a prerequisite of these specific degrees has been established for entry into the proffered position. Given that the beneficiary holds a foreign degree in computer science and engineering, it is unclear whether she would meet the threshold requirements for the position as set forth by [REDACTED]. Although we note that she also holds a master's degree in business administration, we note that a degree in business administration is inadequate to establish that a position qualifies as a specialty occupation.⁵

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or we may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry into the occupation is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

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

⁵ A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Therefore, the beneficiary's possession of such a degree would not automatically qualify her for the proffered position, if in fact it had been established as a specialty occupation.

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an 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.

The petitioner designated its business operations under the corresponding North American Industry Classification System (NAICS) code 541211 designated for "Offices of Certified Public Accountants" on the LCA.⁶ The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This U.S. industry comprises establishments of accountants that are certified to audit the accounting records of public and private organizations and to attest to compliance with generally accepted accounting practices. Offices of certified public accountants (CPAs) may provide one or more of the following accounting services: (1) auditing financial statements; (2) designing accounting systems; (3) preparing financial statements; (4) developing budgets; and (5) providing advice on matters related to accounting. These establishments may also provide related services, such as bookkeeping, tax return preparation, and payroll processing.

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 541211 – Offices of Certified Public Accountants on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last accessed February 18, 2015).

The petitioner must establish that similar organizations in fact routinely require specialty-degreed individuals in parallel positions. For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner.

Preliminarily, we note that on appeal, counsel takes issue with the director's characterization of the petitioner as a company based in the "accounting and audit services industry." Counsel contends that, contrary to the director's finding, the nature of the petitioner and its business dealings focus on the compliance and risk assessment industry.

As noted above, the petitioner chose to classify its business as that of a Certified Public Accountant office by selecting NAICS Code 541211. Therefore, we find that the director's categorization of the petitioner's business in this general category, when reviewing the job postings submitted under this criterion, was proper. We further note that, while counsel appears to take issue with the director's findings regarding the size of the petitioner in comparison to the

⁶ 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 accessed February 18, 2015).

companies represented in the submitted job postings, counsel's assertion on appeal that the petitioner is in fact a compliance and risk assessment company as opposed to an accounting business raises questions regarding the legitimacy of the claims set forth in this petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We now turn to the job postings submitted under this criterion, and note that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted copies of eight advertisements in support of the petition and in response to the RFE. We find, however, that the petitioner fails to establish 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 both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

We will first examine the six job vacancy announcements submitted in response to the RFE. As noted by the director, these announcements were from some of the largest nationally-established accounting firms in the country, such as [REDACTED]

[REDACTED] Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Specifically, the petitioner is a privately-held company with nine employees. The companies represented by the submitted postings are universally known as some of the largest accounting firms in the country. The comparison of the petitioner's nine-person firm to these nationally-renowned companies demonstrates that the nature of the organizations, by virtue of size, scope, and extent of business dealings, is very dissimilar. Other than a similar business agenda in the field of accounting, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

Moreover, most of the advertisements do not appear to be for parallel positions. For instance, all six of the position titles differ from that of the position proffered here, which is that of a financial data analyst. Additionally, most of the positions require significant experience working in the industry, ranging from 2 to 5 years of experience. As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I low, entry-level position.

Additionally, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or the equivalent,

is required for the positions. For example, some of the postings state that a bachelor's degree is required, but they do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. The AAO here reiterates that 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 such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. Moreover, the AAO observes that some of the advertisements indicate that a master's degree in business or business administration is acceptable in lieu of a specialized bachelor's degree. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not support the assertion that a position is a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

On appeal, counsel for the petitioner submits two additional postings. The first, by [REDACTED], is for the position of "Audit Field Manager, Contract Compliance Department." This position differs in title from that of the proffered position, and appears to focus more specifically on management of the company's audit team. The second posting, by [REDACTED] is for the position of Senior Auditor. Again, this posting likewise differs from the proffered position in title as well as duties. We note specifically that this posting is for a job that requires the incumbent to provide consulting services to clients, a task not specifically included in the description of duties for the proffered position here.

The AAO reviewed all of the submitted advertisements. As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁷

Thus, based upon a complete review of the record, 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 both: (1) parallel to the proffered position; and (2) 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 AAO 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

⁷ USCIS "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." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry.

can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

At the outset, we refer the petitioner back to our earlier comments and findings with regard to the record's presentation of the proffered position and its duties in terms of generalized functions that are not described in sufficient detail to establish either whatever substantive work their actual performance would entail or the nature and educational or education-equivalency level of knowledge in any specific specialty that such work would require. As reflected in those discussions, we find that the evidence of record does not establish relative complexity or uniqueness as distinguishing features of the proffered position, let alone as aspects that would establish the position as requiring the service of a person with at least bachelor's degree, or the equivalent, in a specific specialty.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the proffered position's duties as described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

In addition to this decisive evidentiary deficiency, we also find that the content of LCA submitted into the record weighs against a favorable finding here. The LCA indicates a wage level based upon the occupational classification "Financial Analysts" at a Level I (entry) wage.⁸ This wage-level designation is appropriate for positions for which the petitioner expects the beneficiary to only have a basic understanding of the occupation.⁹ That is, in accordance with

⁸ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received. See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁹ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is simply not credible that the petitioner's proffered position is sufficiently complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁰ Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with a finding that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as 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. Consequently, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

Of course, we will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

To merit approval of the petition under this criterion, the record must contain documentary

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.

¹⁰ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

While a petitioner may believe and assert that a proffered position requires a specific degree, that opinion 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Moreover, to satisfy this criterion, the record must establish 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 evidence of 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 or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner submits no evidence in support of the contention that it has routinely employed only specialty-degreed individuals in the proffered position. Rather, the petitioner confirms that the beneficiary is the first person to be hired for the proffered position. Since the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position, the petitioner has not established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) as a possible basis for approval of this particular petition.

Next, we find that the petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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 the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the entire record of the proceeding, we find that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations.

We again refer the petitioner to our earlier discussions with regard to the generalized and relatively abstract information provided about the nature of the proposed duties. As there reflected, the evidence of record simply does not provide sufficient details about the nature of the proposed duties to establish the level of specialization and complexity required to satisfy this particular criterion.

By the same token, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of positions in the Financial Analysts occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, we also here incorporate into this analysis our earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is appropriate for a low, entry-level position relative to others within the occupational category of "Financial Analysts" and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

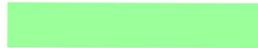
As the evidence of record has not established that the nature of the duties of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

We conclude, therefore, that the petitioner has failed to establish 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. The appeal will be dismissed and the petition denied for this reason.

V. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

(b)(6)



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NON-PRECEDENT DECISION

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