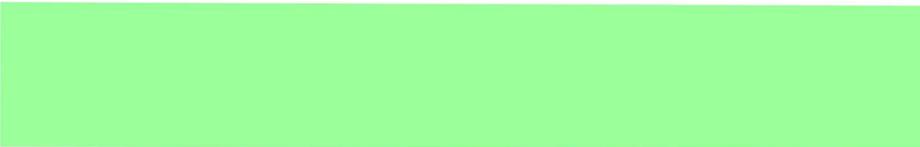


(b)(6)

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

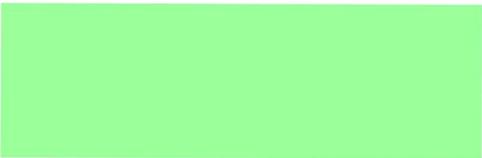


DATE: **FEB 24 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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.

## I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a 141-employee university<sup>1</sup> established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time media communications analyst position at a salary of \$50,000.04 per year,<sup>2</sup> the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

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

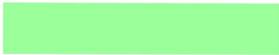
## II. STANDARD OF REVIEW

In the exercise of our administrative review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

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.

<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 611310, "Colleges, Universities, and Professional Schools." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "611310 Colleges, Universities, and Professional Schools," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited February 4, 2015).

<sup>2</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Market Research Analysts and Marketing" occupational classification, SOC (O\*NET/OES) Code 13-1161, and a Level II (qualified) prevailing wage rate.



\* \* \*

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

\* \* \*

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

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

*Id.* at 375-76.

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

### III. LAW

To meet the petitioner's burden of proof in establishing the proffered position as a specialty occupation, the evidence of record must establish that the employment the petitioner is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to

meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

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

#### IV. ANALYSIS

Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

In a January 17, 2014 letter submitted in support of the petition, the petitioner stated that the duties of the proffered position would include the following tasks:

- Analyze surveys and integrate findings into the media strategy with regards to the use of media outlets with the goal of reaching larger audiences and prospective students, both locally and internationally.

- Develop research methodology and design format for gathering data. Conduct surveys for current and prospective students that assess the most popular and effective media outlets for providing and receiving information.
- Monitor and provide analysis to upper management regarding [the petitioner's] online evaluation survey feedback from students regarding professors, course development, and education quality.
- Measure the effectiveness of current marketing and media for justification of the media communications expenses and to demonstrate efficient and effective use of media and marketing funds. Report monthly on media spending and outcomes for the Marketing Department. Develop budgetary plans for media communications to ensure adherence to budget restrictions as allotted by the marketing Department.
- Collaborate with University Executives to better understand business needs.
- Identify marketing problems and opportunities to grow student enrollment and define and prioritize information needs. Lead strategy meetings that develop programming for campaigns, including potential media storylines, content, projects, and articles.
- Based on metrics, assist in developing the annual Marketing Department Plan and continuously modify as media sources develop, network expands, and media outcomes are assessed.
- Analyze domestic and global trends in education in order to develop strategies to drive performance in different geographic areas and modify all international media kits for distribution, tailoring to specific cultures, languages, and delivery of content based off resources and technology available to the country, focusing on Europe and Asia.
- Collaborate with and advise the Communications Coordinators and Director of Marketing in the development of all videos, ads and other media production to promote the University's programs, events, and services.
- Lead research, develop document specification drafts and final revisions of written content for press releases, marketing publication, student recruitment packages, and media reports.
- Ensure media communications support the growth of all University departments. Incorporate a variety of tools in media communications and execution of strategies, including photography, videography, digital productions, publications, website contact, social media and in-person interview.

- Build relationships with the local and international community through outreach programs with the use of media production and information.
- From inception, create concept for and initialize production of quarterly University magazine. Oversee content and quality of publications and adhere to deadlines and budgetary constraints.

In addition to its letter of support, the petitioner submitted a letter, dated January 14, 2014, from [REDACTED] a professor at [REDACTED] evaluating the educational requirements of the media communications analyst position.

The director found the initial evidence insufficient to demonstrate that the proffered position qualifies as a specialty occupation and requested additional evidence. In response to the director's RFE, the petitioner submitted a letter, dated February 20, 2014, in which it grouped the duties of the proffered position according to the percentage time the beneficiary would spend in a particular task as follows:

- A. Analyze data and feedback on marketing strategy and identify areas for improvement: 35%, 14 hours per week on average.
  - i. The job duties outlined below require the services of a person who has a college degree in business, because the job duties require: advanced knowledge of the ability to research, interpret and use business and financial data, research methods, critical thinking, understanding of marketing strategies for diverse populations, distinguishing relevant from irrelevant information, identifying issues and problems, and the ability to analyze data.
    - 1) Analyze surveys and integrate findings into the media strategy with regards to the use of media outlets with the goal of reaching larger audiences and prospective students, both locally and internationally.
    - 2) Review feedback from alumni and current students regarding the most effective use of media outlets for disseminating information about [the petitioner], including social media.
    - 3) Monitor and provide analysis to upper management regarding [the petitioner] online evaluation survey feedback from students regarding professors, course development, and education quality.
    - 4) Perform analysis of enrollment performance and student demographics as related to marketing campaigns.
    - 5) Track marketing campaign leads captured through various forms of media to identify most fruitful marketing initiatives.
    - 6) Develop research methodology and design format for gathering data to most effectively capture information.
- B. Reporting and Budget Responsibilities: 10%, 4 hours per week on average.

- i. The job duties outlined below require the services of a person who has a college degree in business, because the job duties require: the ability to distill complex information into easily understood presentations, advanced oral and written communication skills, and accounting skills.
  - 1) Create monthly report for [the petitioner] executives on effectiveness of marketing and media initiatives both domestic and international and media spending. Develop budgetary plans for media communications to ensure adherence to budget restrictions as allotted by the Marketing Department.
  - 2) Make presentations to [the petitioner] executive branch regarding current state of media spending and effectiveness of strategy, including reports on the state of marketing to particular populations, in particular Europe and Asia.
  
- C. Develop [the petitioner's] international and domestic marketing strategy based on research and analysis designed to increase student enrollment and expand [the petitioner's] reputation as a university of excellence: 35%, 14 hours per week on average.
  - i. The job duties outlined below require the services of a person who has a college degree in business, because the job duties require: advanced knowledge of the international education market, competition among accredited universities, understanding of effective communication strategies for diverse populations and a variety of cultural groups, and the ability to research, interpret and use business and financial data.
    - 1) Analyze domestic and global trends in education in order to develop strategies to drive performance in different geographic areas and modify all international media kits for distribution, tailoring to specific cultures, languages, and delivery of content based off resources and technology available to the country focusing on Europe and Asia.
    - 2) Measure the effectiveness of current marketing and media for justification of the media communications expenses and to demonstrate efficient and effective use of media and marketing funds. Using that knowledge, identify new opportunities or changes to current initiatives.
    - 3) Lead strategy meetings that develop programming for campaigns, including potential media storylines, content, projects, and articles.
    - 4) Based on metrics, assist in developing the annual Marketing Department Plan and continuously modify as media sources develop, network expands, and media outcomes are assessed.
    - 5) Collaborate with University Executives to better understand business needs.
    - 6) Identify marketing problems and opportunities to grow student enrollment and define and prioritize information needs.

- 7) Build relationships with the local and international community based on sound media strategy through outreach programs with the use of media production and information.
- D. Evaluate and develop marketing materials based on research and analysis into trends and data from students. 20%, 8 hours per week on average.
- i. The job duties outlined below require the services of a person who has a college degree in business, because the job duties require: project management skills, advanced understanding of the international and domestic education market, competition among accredited universities, the ability to utilize business data in the formulation of marketing materials.
    - 1) Collaborate with and advise the Communication Coordinators and Director of Marketing in the development of all videos, ads and other media production to promote the University's programs, events, and services.
    - 2) Ensure media communications support the growth of all University departments. Incorporate a variety of tools in media communications and execution of strategies, including photography, videography, digital productions, publications, website contact, social media and in-person interviews.
    - 3) Lead research, develop document specification drafts and final revisions of written content for press releases, marketing publications, student recruitment packages, and media reports.
    - 4) From inception, create concept for and initialize production of quarterly University magazine. Oversee content and quality of publications and adhere to deadlines and budgetary constraints.

The petitioner also states that the beneficiary will "[p]erform analysis of enrollment performance and student demographics as related to marketing campaigns" and "[t]rack marketing campaign leads captured through various forms of media to identify most fruitful marketing initiatives" in addition to the duties listed previously in the support letter. With its RFE response letter, the petitioner re-submitted the documents previously it submitted with the initial filing of the petition.

Upon review, we find that the evidence is insufficient to satisfy any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the position evaluation from [REDACTED] who concluded that "the position of 'Media Communications Analyst' is a specialty occupation requiring bachelor's-level educational training and/or professional experience in Communication, Marketing, Media Communications, or a related area." At the outset, we note that [REDACTED] letter is not accompanied by, and does not expressly state the full content of, whatever documentation, personal observations, and/or oral transmissions upon which he may have been based his opinion. For example, [REDACTED] does not indicate whether he visited the petitioner's business premises or spoke with anyone affiliated with the petitioner, so as to ascertain and base his opinion upon, the substantive nature and educational

requirements of the proposed duties as they would be actually performed. Nor did he specify and discuss any studies, surveys, or other authoritative publications, and, significantly, he did not discuss the pertinent occupational information provided in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). It appears as though [REDACTED] did not base his opinion on any objective evidence, but instead simply restated the duties of the proffered position in the same bullet-pointed fashion as provided by the petitioner. We find that, for these reasons alone, and independent of the other material deficiencies to be noted below, [REDACTED] letter is not probative evidence of the proffered position satisfying any of the criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

However, even if these foundational deficiencies were not present, [REDACTED] letter would still not satisfy any of the criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A). First, it is noted that [REDACTED] did not discuss the duties of the proffered position in substantive detail. To the contrary, he simply listed the duties of the media communications analyst position. The extent of meaningful analysis involved in the formulation of his letter, therefore, is not apparent.

Furthermore, [REDACTED] does not indicate whether he considered, or was even aware of, the fact that the petitioner submitted an LCA certified for a wage-level that is appropriate for a position involving only moderately complex tasks requiring limited judgment. We consider this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for the author's ultimate conclusion regarding the educational requirements of the position upon which he opines.

As indicated above, the LCA submitted by the petitioner in support of the instant position was certified for use with a job prospect within the "Market Research Analysts and Marketing Specialists" occupational category, SOC (O\*NET/OES) Code 13-1161, and a Level II (qualified) prevailing wage rate, the second lowest of the four assignable wage-levels. The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level II wage rates:

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.<sup>3</sup>

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as

<sup>3</sup> U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last visited December 31, 2014).

the petitioner submitted an LCA certified for a Level II wage level. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates, at best, that the beneficiary is only required to perform moderately complex tasks that require limited judgment.

The author's omission of such an important factor as the LCA wage-level significantly diminishes the evidentiary value of his assertions.<sup>4</sup>

For all of these reasons, we find that the letter from [REDACTED] is not probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

We will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

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

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>5</sup> As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Market Research Analysts and Marketing Specialists" occupational category.

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

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

**Duties**

Market research analysts typically do the following:

<sup>4</sup> For example, while [REDACTED] references to "complex multi-level functions entrusted to [the beneficiary]" are acknowledged, the petitioner's attestation to DOL that the beneficiary would perform only moderately complex tasks requiring only limited judgment undermines his findings.

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Market Research Analysts," <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited December 31, 2014).

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

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

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

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

*Id.* at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited December 31, 2014).

The *Handbook* does not report that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into positions within this occupational category. This passage of the *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. Although the *Handbook* states that employees typically need a bachelor's degree in market research or a related field, it continues by indicating that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have "backgrounds" in fields such as business administration, one of the social sciences, or communications. The *Handbook* notes that various courses are essential to this occupation, including statistics, research methods, and marketing. The *Handbook* states that courses in communications and social sciences (such as economics, psychology, and sociology) are also important.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent), unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties."<sup>6</sup> Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is "typically" required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." 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,

<sup>6</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty.

without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, the *Handbook* does not support the proffered position as being a specialty occupation.

Our conclusion that a bachelor's degree in a specific specialty, or the equivalent, is further underscored by counsel's assertion that "a degree in business is a common requirement." 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 Associates*, 19 I&N Dec. 558 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Upon review of the totality of the evidence in the entire record of proceeding, we conclude that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source,<sup>7</sup> indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the

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<sup>7</sup> Counsel argues on appeal that the director "relies too heavily" on the *Handbook*. However, counsel cites no alternative, authoritative sources.

particular position that is the subject of this petition, the evidence of the record does not satisfy the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (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 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1102).

Here and as already discussed, the evidence of record does not establish that the petitioner's proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. While the assertions of [REDACTED] with regard to an industry-wide recruiting and hiring standard are acknowledged, the record contains no evidence supporting his assertions. Again going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

With its filing of the petition, the petitioner submitted copies of four job advertisements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. With its appeal, the petitioner submitted an additional three job advertisements. However, upon review of the documents, we find that the petitioner's reliance on the job advertisements is misplaced.

On the Form I-129 petition, the petitioner describes itself as a university established in [REDACTED] with 141 employees. The petitioner claims that it has a gross annual income of \$5,493,433. Although requested in the Form I-129 petition, the petitioner did not state its net annual income. In its support letter, the petitioner stated that its 2012-2013 academic year enrollment was 756 students, however, the petitioner does not specify the number of undergraduate and graduate students.

As a preliminary matter, counsel's statement on appeal that a non-specific bachelor's degree in "business" is a common requirement undermines any claim that a bachelor's degree in a specific specialty, or the 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.

For the petitioner to establish that an organization located within its industry is also similar to it, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

We have reviewed the seven job advertisements submitted by the petitioner. The record of proceeding does not contain any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

The advertisements include positions at [REDACTED] (a private institution established in [REDACTED] with 13,204 undergraduate students enrolled in the 2014-2015 academic year),<sup>8</sup> [REDACTED] (a private institution found in [REDACTED] with 35,493 undergraduate students enrolled in the 2014-2015 academic year),<sup>9</sup> [REDACTED] (established in [REDACTED] and comprised of five universities and one early childhood education school),<sup>10</sup> [REDACTED] (a private institution established in [REDACTED] with 268 undergraduate students enrolled in the 2014-2015 academic year),<sup>11</sup> [REDACTED] (a private institution established in [REDACTED] with 1,719 undergraduate students enrolled in the 2014-2015 academic year),<sup>12</sup> [REDACTED] (a

<sup>8</sup> [http://colleges.usnews.rankingsandreviews.com/\[REDACTED\]](http://colleges.usnews.rankingsandreviews.com/[REDACTED]) (last visited January 7, 2015).

<sup>9</sup> [http://colleges.usnews.rankingsandreviews.com/\[REDACTED\]](http://colleges.usnews.rankingsandreviews.com/[REDACTED]) (last visited January 7, 2015).

<sup>10</sup> [http://\[REDACTED\]](http://[REDACTED]) and [http://\[REDACTED\]](http://[REDACTED]) (last visited January 7, 2015).

<sup>11</sup> [http://colleges.usnews.rankingsandreviews.com/\[REDACTED\]](http://colleges.usnews.rankingsandreviews.com/[REDACTED]) (last visited January 7, 2015).

<sup>12</sup> [http://colleges.usnews.rankingsandreviews.com/\[REDACTED\]](http://colleges.usnews.rankingsandreviews.com/[REDACTED]) (last visited January 7, 2015).

private institution established in [REDACTED] with 2414 undergraduate students enrolled in the 2014-2015 academic year),<sup>13</sup> and [REDACTED] (a public institution established in [REDACTED] with 12,796 undergraduate students enrolled in the 2014-2015 academic year).<sup>14</sup>

While these organizations may be considered to be more or less within the petitioner's industry, the evidence of record does not also establish that they show the same characteristics as the petitioner such that they are also "similar" to the petitioner. First, we note that the [REDACTED] is a conglomeration of several educational institutions, including an early education school. Therefore, it is not similar to the petitioner. Furthermore, without additional information, the other institutions appear to be different in size than the petitioner with regard to student enrollment. Moreover, the record of proceeding does not contain sufficient information regarding the number of employees each institution employs and the academic programs they offer. Consequently, the record does not contain sufficient information regarding the advertising organizations to conduct a legitimate comparison of them to the petitioner. The record of proceeding therefore lacks evidence to establish that the advertising organizations are similar to the petitioner. Upon review, we find that the petitioner has not provided sufficient information regarding which aspects or traits it shares with these advertising organizations.

Moreover, these advertisements do not appear to involve parallel positions. More specifically, the position with [REDACTED] requires "3-5 years of marketing or public relations experience"; the position with [REDACTED] requires a "4-8 years of marketing management experience (including at least three years of supervisory experience)"; the job announcement with [REDACTED] requires a "minimum of 3 years marketing experience"; [REDACTED] requires a "minimum of 2-5 years of content development, copy writing, and/or social media experience;" [REDACTED] requires "at least five years of experience (three or more including graduate recruitment) of demonstrated successful experience in developing"; the position with [REDACTED] requires "at least five years of experience in design field with previous supervisory experience"; and the position with [REDACTED] requires "two years of experience in marketing, assisting managers." The petitioner designated the proffered position on the LCA through the wage level as a Level II position, which as stated earlier, the individual in this wage level positions are expected to perform moderately complex tasks that require limited judgment. The advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Furthermore, with the exception of [REDACTED] and [REDACTED],<sup>15</sup> all of these employers would recognize a bachelor's degree in business as a qualifying degree for these

<sup>13</sup> <http://colleges.usnews.rankingsandreviews.com>, [REDACTED] (last visited January 7, 2015).

<sup>14</sup> <http://colleges.usnews.rankingsandreviews.com>, [REDACTED] (last visited January 7, 2015).

positions. As discussed earlier, although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff* at 147.

Upon review of the documentation, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (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.

It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally Earl Babbie, The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

Thus, based upon a complete review of the record, we find that the evidence of record does not establish that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common (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. Thus, 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).

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the evidence of record does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the media communications analyst position, as described, necessitates the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the

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<sup>15</sup> [REDACTED] requires a master's degree but does not specify a specialty; and [REDACTED] requires a bachelor's degree in the divergent specialties of graphic design, marketing, advertising, or a related discipline, along with training and experience in art, illustrations and/or graphic design.

evidence of record does not distinguish the proffered position from other positions falling within the "Market Research Analysts" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

More specifically, the petitioner did not demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even essential, in performing certain duties of a continuous quality improvement supervisor position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the petitioner's proffered position.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, we incorporate by reference and reiterate our earlier discussion that the LCA indicates that the position is a low-level position relative to others within the occupation.<sup>16</sup> Again, based upon the wage rate, the beneficiary is only required to perform moderately complex tasks that require limited judgment. Accordingly, given the *Handbook's* indication that typical positions located within the "Market Research Analysts" occupational category do not require at least a bachelor's degree in a *specific specialty*, or the equivalent, for entry, it is not credible that a position involving limited exercise of judgment *would* have such a requirement.<sup>17</sup>

<sup>16</sup> Again, the *Prevailing Wage Determination Policy Guidance* (available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last visited February 4, 2015)) issued by DOL states the following with regard to Level II wage rates:

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

Again, the proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level II position. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA with a Level II wage rate, the petitioner effectively attests that the beneficiary is only required to perform moderately complex tasks that require only limited judgment.

<sup>17</sup> Any such assertion would also be undermined by counsel's own indication that a non-specific bachelor's degree in "business" would suffice.

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>18</sup>

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficient probative evidence to distinguish the proffered position as more complex than or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

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

For all of these reasons, it cannot be concluded that the evidence of record satisfies the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

<sup>18</sup> 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 at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

We note that the petitioner claims repeatedly that the duties of the proffered position can only be employed by a degreed individual. While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). The record does not contain documentary evidence demonstrating a hiring history by the petitioner. As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

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

Furthermore, there is the matter of the LCA. We incorporate our earlier discussion regarding the wage-level designation on the LCA, which is appropriate for duties whose nature is less complex and specialized than required to satisfy this criterion. We find that both on its own terms and also in comparison with the two higher wage-levels that can be designated in an LCA, by the submission of

an LCA certified for a wage-level II, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category.

As earlier noted, the pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes Level II wage-level as follows:

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.<sup>19</sup>

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

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

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

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

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

*Id.*

<sup>19</sup> U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last visited February 4, 2015).

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

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

*Id.*

As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level position relative to others within the same occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level III), the proffered position does not involve "a sound understanding of the occupation," "tasks that require exercising judgment," or "supervisory authority."

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

## V. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the director's decision will not be disturbed.<sup>20</sup>

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

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

<sup>20</sup> As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.