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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 26 2015**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("the director"), denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Management Consulting" business. The petitioner states that it was established in [REDACTED] and employs 960 persons in the United States. It seeks to employ the beneficiary in a position to which it assigns the job title "Associate" on a full-time basis and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the petitioner had not provided evidence sufficient to establish that the proffered position is a specialty occupation.

The record of proceeding before this office includes the following: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, counsel's brief and a letter signed by the petitioner's principal.

Upon review of the entire record of proceeding, we find that the petitioner has failed to overcome the director's grounds for denying this petition.¹ Accordingly, the appeal will be dismissed and the petition will remain denied.

I. THE LAW

The issue in this matter is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

II. FACTS AND PROCEDURAL HISTORY

The petitioner identified the proffered position as an "Associate" on the Form I-129, and attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Operations Research Analysts," SOC (ONET/OES) Code 15-2031, at a Level I (entry-level) wage.² The LCA was certified on March 6, 2013, for a validity period from August 2, 2013 to August 1, 2016.

The petitioner identified its industry according to the North American Industry Classification System (NAICS) Code as 541613, "Marketing Consulting Services." See U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541613 Marketing Consulting Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Feb. 25, 2015).³

² 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.

³ The NAICS code "541613" identifies this U.S. industry as an industry that comprises establishments primarily engaged in providing operating advice and assistance to businesses and other organizations on marketing issues, such as developing marketing objectives and policies, sales forecasting, new product developing and pricing, licensing and franchise planning, and marketing planning and strategy.

In the petitioner's March 29, 2013 letter in support of the petition, the petitioner stated that it "is a global management consulting firm focused on marketing and sales effectiveness." The petitioner indicated that its "clients typically are large and mid-sized companies whose success depends on the effectiveness of their sales and marketing." The petitioner stated further that it "help[s] [its clients] gather and analyze data to create the best strategies, orchestrate sales and marketing activities to increase demand efficiently, and change quickly to become more competitive."

The petitioner also described the proffered position as an "Associate in the Business Technology" group and indicated "the beneficiary will conduct advanced mathematical modeling and complex statistical analysis of customers' industries, develop strategies designed to dramatically improve the efficiency and effectiveness of customers' sales and marketing efforts, and design and develop customized technology solutions that further the goals of these strategies." The petitioner explained that an associate in the business technology group is "responsible for all stages of [its] comprehensive sales and marketing technology products, from analysis of customers' industries to final implementation and training."

The petitioner stated that the beneficiary's specific day-to-day duties support development of customized technology solutions and during the "needs assessment phase," the duties will include:

- Conducting mathematical modeling and regression analysis on industry and in-house sales and marketing data;
- Analyzing customers' current sales and marketing technology;
- Identifying target markets;
- Developing and documenting effective strategies for assessing customers;
- Will develop, from scratch, customized software that addresses the customers' needs, based on the results of the analytical work; and
- Will also ensure that the customized software designs are seamlessly integrated into customers' existing IT platforms.

[Paraphrased and bullet points added for clarity.]

The petitioner also noted that "[o]nce the customized software reaches the implementation phase, the beneficiary will develop training materials for end users that fully explain the software's analytical capabilities, as well as system manuals for customers' in-house IT professionals."

The petitioner claimed: "In order to effectively execute the analytical and software development duties of the position, which center on advanced mathematical modeling and complex statistical analysis, Associates in the Business Technology group must have at least a U.S. bachelor's degree in Engineering, Computer Science, or related, or its foreign equivalent." The petitioner asserted that the "coursework in these degree programs are essential because they not only cover advanced mathematics, such as calculus, and complex statistics, such as regression analysis, but require students to apply this knowledge in the analysis and resolution of technical or business scenarios." The petitioner indicated that "the stated degree requirement is [the petitioner's] global standard, and

is applied to all Associate[s] regardless of whether they are hired in the U.S. or recruited from one of [the petitioner's] international affiliates."

Upon review of the initial record, the director requested additional evidence to establish that the proffered position qualifies for classification as a specialty occupation. The director outlined the specific evidence that could be submitted.

In response, the petitioner asserted: "As is clear from the position's specific, technical duties, Associates must be fluent in advanced mathematics and complex statistics, as well as possess formal training in applying their theoretic knowledge in the analysis and resolution of technical or business scenarios." The petitioner asserted further:

At [the petitioner], Associates are required to understand and use advanced mathematical modeling and complex statistical methods to analyze customers' industries, develop strategies designed to dramatically improve the efficiency and effectiveness of customers' sales and marketing efforts, and design and develop customized technology solutions that further the goals of these strategies.

[The petitioner] strives to provide cutting edge, mathematically based sales and marketing solutions that are more advanced, both mathematically and statistically, than all of their competitors. Increasing business efficiency through technological advancements requires employees with more than a basic understanding of business principles. Because our products rely on the application of cutting-edge mathematical and statistical theories, it is critical to employ personnel whose education is congruent with these requirements.

The petitioner provided a copy of its position announcement for the proffered position which described the Business Technology Associate's duties as:

- Understand client business issues, operating business rules, data, processes and systems
- Collaborate with clients to determine solution requirements and create detailed assessment document
- Assist in data architecture and system solution design and testing
- Implement innovative technical solutions
- Gain immediate responsibility for project deliverables
- Take initiative to advance your problem solving skills and develop [the petitioner's] technology capabilities

The announcement noted that the petitioner "welcomes candidates with at least [a] bachelor's degree in Engineering, Computer Science or related."

The petitioner also submitted a list of 12 of its 960 claimed employees who held the title "Associate" in the Business Technology Group and their degrees. The list included seven

employees with a major and degree in the fields of computer science and engineering, and one employee in each of the fields of computer science and economics, electronics and communication engineering, telecommunication engineering, manufacturing processes and automation engineering, and electrical and electronics engineering.⁴

The petitioner further submitted a photocopy of a brochure introducing the company and indicating it is "Bringing Science to the Art of Sales and Marketing."

Upon review of the record, the director denied the petition. The director determined that the petitioner had not established that the proffered position is a specialty occupation.

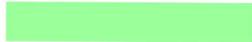
On appeal, the petitioner asserts that it has established that it normally requires an engineering, computer science, or related degree to perform the duties of its associates in the business technology group. The petitioner references the "report run directly from the [the petitioner's] human resources systems" and contends that the report "corroborates, and is corroborated by, [the petitioner's] position announcement/advertisement, the signed letter of support, and the response to the request for evidence." The petitioner also references an attached July 25, 2013 letter signed by one of the petitioner's principals, [REDACTED] which was prepared to explain why the proffered position requires a degree in engineering or computer science.

[REDACTED] states that "the experience gained through an Engineering degree program is perfectly aligned with the requirements of the position due to the complexity of [the petitioner's] innovative data analysis products and technology services." [REDACTED] explains that the petitioner works with companies to improve their sales and that in the past a business-related education may have been sufficient to accomplish this task. However, [REDACTED] claims that the petitioner "survives as a company because we look past traditional business models by taking advantage of the dramatic improvements in methods to mathematically analyze data from a theoretical perspective, utilizing advanced capabilities of modern computer systems." [REDACTED] contends that the petitioner is a company which "develop[s] and engineer[s] complex, computer-based data analysis systems that result in specialized analytical data monitoring and diagnostic solutions, which are rooted in a scientific approach." [REDACTED] reiterates that "coursework in an engineering degree program is essential because it not only covers advanced mathematics, such as calculus, complex statistics, and regression analysis, but requires students to apply this knowledge in the analysis and resolution of technical or business scenarios."

Finally, [REDACTED] avers:

[A]n Engineering degree program is ideal preparation for the position of Associate, which is why it is required. No other degree program, including business related

⁴ The petitioner does not provide corroborating evidence that these individuals were issued degrees in the listed majors or that any foreign degrees issued were evaluated as the equivalent of a U.S. bachelor's degree issued by an accredited U.S. university.



programs, requires the application of advanced mathematics and computer science to real world problems, such as creating a new chemical or building a software system.

The petitioner asserts that it has clearly shown that the position of Associate normally requires a degree in the specific specialty of Engineering or Computer Science and that as the beneficiary holds a degree deemed equivalent to a U.S. Engineering degree, he is qualified to perform the duties of the proffered position.

III. ANALYSIS

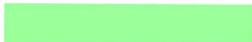
A. Material Findings

The issue here is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

To ascertain the intent of a petitioner, USCIS must look 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 offered, 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."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner has not done so here.

In the instant case, the duties of the proffered position, as described by the petitioner in support of the Form I-129 petition and in response to the director's RFE, have been stated in generic terms that fail to convey the actual tasks the beneficiary will perform on a day-to-day basis. For example, in support of the petitioner's broad claim that "the beneficiary will conduct advanced mathematical modeling and complex statistical analysis of customers' industries, develop strategies designed to dramatically improve the efficiency and effectiveness of customers' sales and marketing efforts, and design and develop customized technology solutions that further the goals of these strategies," the petitioner provided a similarly generic list of duties. The petitioner does not explain what the beneficiary's duties will encompass regarding mathematical modeling and regression analysis or the duties involved in analyzing customers' current sales and marketing technology. The petitioner states that the beneficiary will identify target markets but does not describe the tasks associated with



this function. The petitioner does not explain the "Associate's" process in developing strategies or the duties involved in integrating software into customers' IT platforms. The petitioner does not provide a detailed description of the beneficiary's routine duties.

In response to the RFE, the petitioner did not provide further detail regarding the beneficiary's actual duties, instead, it submitted a position announcement which also provided a general overview of the position's duties. The announcement described the duties in vague terms that fail to convey the specific tasks that the beneficiary will perform. For example, the petitioner represented that the beneficiary will understand client business issues and rules and its processes and systems, will collaborate with clients to determine solution requirements and create detailed assessment documents. Again, the petitioner does not describe what or how the beneficiary will actually accomplish these tasks. Moreover, the petitioner indicates that the beneficiary will assist in data architecture and system solution design and testing but does not indicate what this "assistance" entails. The phrase "implement innovative technical solutions" and responsibility for project deliverables as well as taking initiative are broad concepts that do not convey sufficient insight into the actual work the beneficiary will be expected to perform. Notably the petitioner's announcement does not discuss advanced mathematical modeling and complex statistics such as regression analysis.

Thus, upon review, it is not evident that the proposed duties as described, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. That is, to the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested. The job descriptions do not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities. The overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's operations. The petitioner has failed to demonstrate how the performance of the duties of the proffered position, as described by the petitioner, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.⁵

Moreover, upon review of the petitioner's description of the duties of the proffered position, we observe that the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks it generally describes. Thus, the petitioner failed to specify which tasks were major functions of the proffered position and it did not establish the frequency with which each of the duties would be

⁵ The petitioner's statements regarding its requirements to perform the duties of the proffered position will be discussed in detail below.

performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not even establish the primary and essential functions of the proffered position.

In addition, when attempting to understand the actual duties of the proffered position and the level of complexity they may require, we look to the LCA submitted with the petition. The LCA provides not only the classification the petitioner believes most closely corresponds to the duties of its proffered position but also provides the petitioner's attestation regarding the appropriate wage level attached to the level of responsibilities and complexity of tasks inherent in the position. As noted above, the petitioner attested on the LCA that the occupational classification for the position is "Operations Research Analysts," SOC (ONET/OES) Code 15-2031, at a Level I (entry-level) wage.

We note, that wage levels should be determined by the petitioner 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.⁶ U.S. Department of Labor (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.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate, the attested wage level in this matter, is described as follows:

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

⁶ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

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.

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.

Here, the petitioner's designation that the proffered position requires only a Level I, entry-level wage demonstrates the petitioner's belief that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

The abstract level of information provided regarding the duties of the proffered position and the wage level on the LCA fail to provide sufficient information regarding the petitioner's position to determine that the position proffered here is a specialty occupation position. The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty (or its equivalent). Consequently, this precludes a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

That is, the petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any

criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the petitioner has failed to establish that the proffered position is a specialty occupation under the applicable provisions. As will next be discussed, the petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not credibly supported by the job descriptions or substantive evidence.

B. The Petitioner's Requirements for the Position

As noted above, the petitioner claims that the required educational requirement for the proffered position is a bachelor's degree in "Computer Science, Engineering, or its foreign equivalent." 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, for example, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

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

The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or manufacturing processes and automation engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

On appeal, the petitioner asserts that it requires an engineering, computer science, or related degree to perform the duties of its associates in the business technology group. The petitioner also refers to the July 25, 2013 letter signed by [REDACTED] submitted on appeal. As noted above, in that letter [REDACTED] describes the petitioner's business operations and reiterates that "coursework in an engineering degree program is essential because it not only covers advanced mathematics, such as calculus, complex statistics, and regression analysis, but requires students to apply this knowledge in the analysis and resolution of technical or business scenarios." [REDACTED] also claims that "an engineering degree program is ideal preparation for the position of Associate, which is why it is required." [REDACTED] notes further his understanding that "[n]o other degree program, including business related programs, requires the application of advanced mathematics and computer science to real world problems, such as creating a new chemical or building a software system."

Upon review, however, we find that the petitioner has not provided sufficient evidence to establish a factual basis for its opinion that the analysis and resolution of technical or business scenarios is a fundamental component of an engineering or computer science or related degree. The petitioner asserts a general educational standard, without referencing any supporting authority or any empirical basis for the pronouncement. The proffered opinion does not provide a substantive, analytical basis for the petitioner's opinion and ultimate conclusion.

We recognize that the petitioner desires an employee with a strong mathematical and analytical background who as it stated initially "will conduct advanced mathematical modeling and complex statistical analysis of customers' industries, develop strategies designed to dramatically improve the efficiency and effectiveness of customers' sales and marketing efforts, and design and develop customized technology solutions that further the goals of these strategies." However, the petitioner does not substantiate that only a bachelor's degree in "engineering, computer science, or related" would provide the knowledge to perform the general duties it ascribes to the proffered position. For example, the petitioner stated in its letter in support of the petition that "coursework in these degree programs [referring to engineering, computer science or related] are essential because they not only cover advanced mathematics, such as calculus, and complex statistics, such as regression analysis, but require students to apply this knowledge in the analysis and resolution of technical or business scenarios." Thus, coursework, not a bachelor's degree in a specific discipline, would be sufficient to qualify to perform the duties of the position proffered here. Moreover, as the petitioner does not provide a detailed description of the beneficiary's actual day-to-day tasks, it has not provided a basis to substantiate any specific coursework that would be necessary to perform the duties of the position. That is, other than the petitioner's conclusory statements, the record does not include evidence of specific bachelor's level coursework that is directly related to particular duties.

The petitioner, who bears the burden of proof in this proceeding, failed to provide sufficient evidence to establish that either (1) computer science and engineering (including any and all engineering specialties) are closely related fields, or (2) a degree in engineering (including any and all engineering specialties) is directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this

matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards.⁷ Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty*, or its equivalent, for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

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

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

The material deficiencies in the evidentiary record are decisive in this matter and they require that the appeal be dismissed. However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in the record that would also require dismissal of the appeal on the issue of specialty occupation.

Assuming for the sake of argument that the proffered duties as generally described by the petitioner would in fact be the duties to be performed by the beneficiary, we will analyze the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation.

To make its determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

We recognize DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁸ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Operations Research Analysts." We reviewed the chapter of the *Handbook* entitled "Operations Research Analysts" including the sections regarding the typical duties and

⁷ Again, the requirement of a degree in engineering, without more, is not the equivalent of a bachelor's degree in a specific specialty.

⁸ Our references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

requirements for this occupational category. However, the *Handbook* does not indicate that "Operations Research 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.

In regard to the education and training for an operations research analyst, the *Handbook* reports:

Applicants need a master's degree for most operations research positions, but a bachelor's degree is enough for many entry-level positions. Since few schools offer bachelor's and advanced degree programs in operations research, analysts typically have degrees in other related fields.

Although some employers prefer to hire applicants with a master's degree, many entry-level positions are available for those with a bachelor's degree. Although some schools offer bachelor's and advanced degree programs in operations research, many analysts typically have degrees in other technical or quantitative fields, such as engineering, computer science, mathematics, or physics.

Because operations research is based on quantitative analysis, students need extensive coursework in mathematics. Courses include statistics, calculus, and linear algebra. Coursework in computer science is important because analysts rely on advanced statistical and database software to analyze and model data. Courses in other areas, such as engineering, economics, and political science, are useful because operations research is a multidisciplinary field with a wide variety of applications.

Continuing education is important for operations research analysts. Keeping up with advances in technology, software tools, and improved analytical methods is vital.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Operations Research Analysts," <http://www.bls.gov/ooh/math/operations-research-analysts.htm#tab-4> (last visited Feb. 25, 2015).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into an operations research analyst occupation. Rather, although the *Handbook* recognizes that students need coursework in mathematics and computer science, it also reports that courses in other areas, such as engineering, economics, and political science, are useful because operations research is a multidisciplinary field with a wide variety of applications. According to the *Handbook*, a range of programs can help people prepare for jobs in this occupation. The *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a *specific specialty*, or its equivalent.

The information in the *Handbook* regarding this occupation, emphasizes the need for the duties of the position be described in detail, that any directly related coursework necessary to perform the duties of the position be delineated with specificity, and that these elements relate to the petitioner's

actual business operations. In this matter, the generic descriptions submitted fail to provide the necessary information to readily assess whether the beneficiary will be required to primarily perform duties that require the theoretical and practical application of a body of highly specialized knowledge *and* the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement 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 position 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 has not satisfied the criterion 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the petitioner's industry's professional association indicating that it has made a degree a minimum entry requirement.

Based upon a complete review of the record of proceeding, the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is (1) common to the petitioner's industry (2) in parallel positions (3) among organizations similar to the petitioner. 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 support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted its corporate documents, a copy of a portion of its 2011 Internal Revenue Service (IRS) tax return, an excerpt regarding careers at the petitioner, and a copy of a brochure introducing the petitioner's products and services.

However, a review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the 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 proffered position. The petitioner's conclusory statements are insufficient to establish this criterion. 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)). The description of 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 sufficiently detailed information to distinguish the proffered position as more complex 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.⁹ Consequently, it cannot be concluded that the petitioner has satisfied 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. To this end, USCIS reviews the petitioner's past recruiting and hiring practices, information regarding employees who previously held the position, as well as any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. A petitioner's perfunctory

⁹ This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. More specifically, the LCA indicates a wage level at a Level I (entry level) wage. As previously mentioned, the wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

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

In this matter, the petitioner submitted a report that it employed twelve individuals in the proffered position of Associate in its Business Technology Group. The petitioner also indicated that it employs 960 persons. The petitioner does not provide evidence of the total number of individuals it employs or has employed in the proffered position. It appears that the petitioner has provided a sampling of its employees that hold or have held the proffered position. Thus, it is not possible to conclude that the petitioner normally requires a degree or its equivalent for the position, as there is insufficient data to determine the total number of individuals previously or currently employed in this occupation.

We have reviewed the petitioner's position announcement for the proffered position and observe that the petitioner states that it "welcomes candidates with at least [a] bachelor's degree in Engineering, Computer Science or related." This statement does not set out the petitioner's minimum educational requirements for the position.

Based on the evidence of record, we are unable to determine that the petitioner routinely requires a bachelor's degree in a specific specialty, or its equivalent, for the position proffered here.¹⁰ The record is simply deficient in this regard. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

¹⁰ We also reiterate that even if the petitioner had proffered evidence that it only hired individuals with a specific engineering degree, or a degree in a closely related field, or its equivalent, we would still be required to find that the position for which they were employed actually required the degree. Otherwise as noted above, the petitioner could require the degree only to establish the position as a specialty occupation. As discussed above, in this matter, the petitioner has not provided probative evidence that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and the 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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The petitioner claims that the nature of the specific duties of the position in the context of its business operations requires advanced and complex knowledge and that this knowledge is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We reviewed all of the evidence in the record, including the petitioner's brochures, the tax and corporate documents, and the descriptions of the proffered position. We carefully considered the petitioner's statements regarding the proffered position and its business operations. However, upon review of the evidence, the record does not support the assertion that the proffered position satisfies this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Furthermore, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties.

The petitioner has not established that the nature of the specific 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. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence fails to establish that the position as described more likely than not constitutes a specialty occupation. The petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Accordingly the director's decision must be affirmed and the petition denied on this basis.

IV. CONCLUSION

The petition must be denied 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; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

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