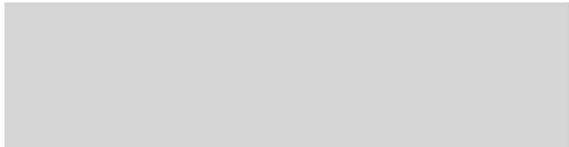


(b)(6)

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

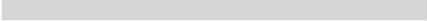


U.S. Citizenship
and Immigration
Services



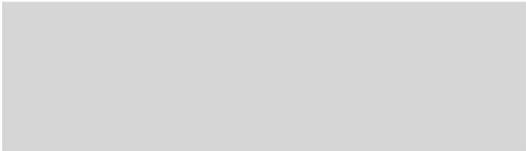
DATE: JUL 08 2015

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL HISTORY

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a “fuel distributorship” with 4 employees established in [REDACTED]. In order to continuously employ the beneficiary in what it designates as a credit analyst position, the petitioner seeks 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).

On June 17, 2014, the director denied the petition, finding that the petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner subsequently filed an appeal.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of decision; and (5) the Form I-290B and supporting documentation. We reviewed the record in its entirety before issuing our decision.¹

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

II. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

A. The Law

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

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

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

- (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 meet one of the following criteria:

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

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

F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

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

B. The Proffered Position

The petitioner indicated on the Form I-129 and in supporting documentation that it seeks the beneficiary's services as a credit analyst to work on a part-time basis (25 hours per week) at a salary of \$22.01 per hour.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Credit Analysts" – SOC (ONET/OES) Code 13-2041, at a Level I (entry level) wage.

In a letter of support dated February 18, 2014, the petitioner provided the following duties for the proffered position:

In this position, [the beneficiary's] specific duties will include: (i) analyzing current credit data and financial statements of commercial clients to determine the degree of risk involved in extending credit; (ii) preparing reports with this credit information

for use in decision-making; (iii) comparing key ratios of liquidity, profitability, credit history, and cash flow; (iv) analyzing income growth, market share, industry risk, and collateral appraisal; and (v) summarizing credit analysis and credit approval.

The petitioner also noted that the "minimum prerequisites for the offered position require a skilled professional with a Bachelor's degree in Business Administration, Accounting, Finance, or a related field."

In response to the RFE, the petitioner provided further information regarding the job duties of the proffered position as follows:

Analyze current credit data and financial statements of commercial clients to determine the degree of risk involved in extending credit (40%)

Beneficiary will spend 40% of his time analyzing current credit data and financial statements of commercial clients to determine the degree of risk involved in extending credit. He will be analyzing the feasibility of customers' credit worthiness and underwrite the credit recommendations. To accomplish this task, beneficiary will identify data sources and data retrieval necessary to conduct credit analyses. [The beneficiary] will also develop processes and procedures to conduct analyses and make recommendations based on findings. He will also investigate all available sources of credit and financial information available and participate in design, development and implementation of computer systems used for credit analysis & reporting. In addition, [the beneficiary] will prepare specialized reports on credit quality for President. To meet these objectives, beneficiary should possess a strong basic skill set, including excellent communication and people skills, strong analytical and problem-solving skills, and the ability to work effectively in a team or independently.

[The beneficiary] will spend most of his time conducting a risk analysis of the customer by analyzing current credit data and financial statements of commercial clients to determine the degree of risk involved in extending credit to the Company's clients. To accomplish this task, the Beneficiary will identify data sources and data retrieval necessary to conduct credit analyses of our customers. The beneficiary will also develop processes and procedures and [safeguards] necessary to conduct analyses and make recommendations based on findings. He will investigate all available sources of credit and financial information available and participate in design, development, and implementation of computer systems used for credit analysis & reporting. He must follow all federal and state regulations when pulling credit scores.

Compare key ratios of liquidity, profitability, credit history, and cash flow (25%)

As a Credit Analyst, [the beneficiary] will be analyzing paying habits of customers

who are delinquent in payment of bills and make recommends for action. He will monitor financial performance and compliance of customers with repayment history, perform risk ratings and respond to any compliance actions of issues i.e. work with outside attorneys in providing appropriate credit information necessary to collect outstanding moneys through litigation.

He will also review files to select delinquent accounts to forward to Collection Company for collection efforts. He will perform financial statement analysis on information provided by new accounts and existing customer to aid in decision. He will be required to analyze credit information which includes complete financial analysis. He may be required to contact the customer directly for financial information, and bank references for information supporting credit line decisions. He will be reviewing new accounts applications and determine/recommend credit lines, review sales requirements for new/existing accounts. He must possess keen awareness of the credit eligibility of the business and must understand and read financial statements and credit reports for the company. He must monitor existing accounts based on credit rank and expiration date of credit line and keep abreast of industry trends as to how they relate to the account base. [The beneficiary] will assist President and sales staff in the following: (i) analyze feasibility and prepare recommendation for approval of other recommended action of requests for credit; (ii) populate financial statement data for existing and prospective customers and whether to obtain personal guaranty in Moody's Risk Analyst's CreditEdge Plus; (iii) Prepare financial projections using Moody's Risk Analyst in support of credit recommendations; and assist with credit and/or compliance decisions utilizing industry knowledge and analysis of the credit by identifying credit strength and/or weaknesses of customers through payment history; and (iv) Analyze and prepare compliance action documentation for credit payment.

Prepare reports with this credit information for use in decision-making (10%)

[The beneficiary] will prepare specialized reports on credit quality for the President. To meet these objectives, [the beneficiary] must possess a strong basic skill set, including excellent communication and people skills, strong analytical and problem-solving skills, and the ability to work effectively in a team or independently. He may request, secure, and maintain Tax Exempt Certificates and related database/files. [The beneficiary] will reduce the amount of duplicated account numbers wherever possible. He will review linking issues and terms inconsistency. He will prepare monthly/weekly/daily reports relating Customer Credit Lines, Over Credit Line, A/R Reporting and Write-Offs. Based on the information collected[,] [the beneficiary], will make recommendations on whether an account be closed, credit limit reduced or extended, or collection attempted. Confer with representatives of credit associations and other businesses to exchange information concerning credit ratings and forwarding addresses.

Analyze income growth, market share, industry risk, and collateral appraisal;

and [s]ummarizes credit analysis and credit approval (25%)

[The beneficiary] will be monitoring and managing company's credit risk and preparing reports with key ratios to ensure that customers are not too risky for the Company. He may recommend blocking the customer from future orders. He will be responsible for ensuring strict adherence to corporate policies and credit approval matrix. He will ensure protection of company assets in all areas through front line knowledge and experience. He will use logic and analysis to identify the strengths and weaknesses of different approaches based on key ratios of the customer and company. He will put forth suggestions and recommendations pertaining to process improvements towards credit policies and procedures to the management.

C. Analysis

To make its determination whether the proffered position qualifies as a specialty occupation, we now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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

As a preliminary matter, in the denial decision, the director noted that the petitioner submitted information regarding the occupational category of financial managers from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, and that the job duties of the proffered position do not appear to fall under the occupational category of financial managers. On appeal, the petitioner confirms that the position is for a credit analyst. As noted by the director, there is no evidence in the record that the beneficiary will supervise other employees and will perform the duties that are typical of a financial manager. Therefore, we will only review the occupational category of credit analysts.

USCIS recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² We reviewed the chapter of the *Handbook* entitled "Credit Analysts," and note that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

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

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited June 17, 2015).

Thus, the narrative of the *Handbook* indicates that there are occupations for which only brief summaries are presented. That is, detailed occupational profiles for these occupations are not developed.³ The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

We observe that the *Handbook* does not support the petitioner's assertion that credit analyst positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The full-text of the *Handbook* regarding this occupational category is as follows:

Credit Analysts
(O*NET 13-2041.00)

Analyze credit data and financial statements of individuals or firms to determine the degree of risk involved in extending credit or lending money. Prepare reports with credit information for use in decision making.

- 2012 employment: **61,800**
- May 2012 median annual wage: **\$61,080**
- Projected employment change, 2012-22:

Number of new jobs: **6,400**

Growth rate: **10 percent (about as fast as average)**

³ We note that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

- Education and training:

Typical entry-level education: **Bachelor's degree**

Work experience in a related occupation: **None**

Typical on-the-job-training: **None**

Id. (last visited June 17, 2015).

The *Handbook* summary data provides "education and training" information for occupations. We note that, the *Handbook* reports only that a bachelor's degree is typical – but not required – for entry into credit analyst positions, and more importantly, the *Handbook* does not report that bachelor's degrees held by those entering the occupation are limited to and must be in any specific specialty directly related to the occupation. Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupational category.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In response to the RFE, the petitioner submitted printouts from several Internet sources. However, we find that the articles do not support the petitioner's assertion that a bachelor's degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the proffered position. For example, a printout entitled "How Do I Become a Credit Analyst" from www.degreedirectory.org states that "most employers look for credit analysts who hold a bachelor's degree in finance or a related subject, such as accounting, business administration or economics." Similarly, a printout entitled "How to Become a Credit Analyst" from www.wkikihow.com/Become-a-Credit-Analyst states that "[t]o qualify for credit analyst jobs, you will usually need a bachelor's degree in finance, business administration, accounting or economics." An article from unknown source states that "you should have a bachelor's degree in accounting, finance or business administration." However, 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). Further, the petitioner did not establish 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

Moreover, the petitioner did not provide additional information regarding the articles to establish that they are authoritative sources. Notably, the articles do not sufficiently explain the factual bases or provide reliable sources to substantiate their conclusions. For example, one of the articles states that the author of the article "specializes in business, finance and careers" and she has a Bachelor of Arts in English literature. There is no other information to establish her expertise in this matter.

The petitioner also emphasized that the Foreign Labor Certification Data Center Online Wage Library indicates that the occupational category of credit analysts has the Educational & Training Code of 5, which requires a bachelor's degree. However, as discussed, the requirement of a bachelor's degree without a specific specialty is inadequate to establish that a position qualifies as a specialty occupation.

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

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

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

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

the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

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

In the Form I-129 and supporting documentation, the petitioner stated that it is a fuel distributorship established in [REDACTED] with 4 employees and an annual gross income of approximately \$25 million. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 454319. According to the NAICS website, this number is not a valid code.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, 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 reviewed the job advertisements submitted by the petitioner. Notably, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. Further, as they are only solicitations for hire, they are not evidence of what qualifications were ultimately required for the positions. Moreover, upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

For example, the advertisements include positions with [REDACTED] and, [REDACTED], but neither the job postings nor the petitioner provided any information regarding these companies and how they are similar to the petitioner. In addition, the petitioner provided a job posting for [REDACTED]; and, [REDACTED]

Without further information, the advertisements appear to be for organizations that are not similar to the petitioner, and the petitioner has not provided any probative evidence to suggest otherwise. Consequently, the record lacks sufficient information regarding the advertising

employers to conduct a legitimate comparison of the organization to the petitioner. In the instant case, the petitioner did not supplement the record of proceeding to establish that the employers are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

Further, the petitioner has not established that the advertisements are for parallel positions. The petitioner did not provide additional information to sufficiently establish that the primary duties and responsibilities of the advertised positions are parallel to the proffered position. Further, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or the equivalent, is required for the positions. For example, the posting from [REDACTED] does not require a bachelor's degree. The posting from [REDACTED] states that a bachelor's degree in finance is preferred; however, a *preference* for a degree is not an indication of a requirement for at least a bachelor's degree in a specific specialty, or its equivalent.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.⁴

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

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

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be

⁴ It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner has not demonstrated what inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected outweigh the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

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 described the proffered position and its business operations in its letter of support, in the response to the RFE, and in the brief submitted with the appeal. Upon review, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of 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 in performing certain duties of the position, the petitioner has not demonstrated 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 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.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Credit Analysts" at a Level I wage.

In accordance with the relevant DOL explanatory information on wage levels, a Level I position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to only have a basic understanding of the occupation. The wage-rate indicates that the beneficiary 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 she will receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.⁵ For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."⁶ The evidence of record does not establish that this position is

⁵ The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

⁶ 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.

significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty is not required for the proffered position.

In the instant case, the petitioner has not established which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388.

To satisfy this criterion, 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.

The petitioner stated that the position of credit analyst has "always been fil[l]ed by individuals with education and experience equivalent to a US. Bachelor's degree in Business Administration, Accounting, Finance, or a related degree which requirement have remained consistent in our staffing of [the beneficiary]." However, the petitioner did not provide any documentation regarding the education level of employees that previously held the position of credit analyst. Thus, the evidence does not support the assertion that the petitioner normally requires at least a bachelor's degree in a specific specialty directly related to the duties of the position (or its equivalent) for the position. The petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent

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

The petitioner claims that the nature of the specific duties of the position in the context of its business operations 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. We reviewed the petitioner's statements regarding the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

We hereby incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, 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" and requires a significantly higher wage. The petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied.⁷

⁷ Since the identified basis for denial is dispositive of the petitioner's appeal, we will not address other



III. CONCLUSION AND ORDER

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

ORDER: The appeal is dismissed.

grounds of ineligibility we observe in the record of proceeding.