

(b)(6)

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



U.S. Citizenship  
and Immigration  
Services

**JUN 03 2015**

DATE:

PETITION RECEIPT #: 

IN RE:

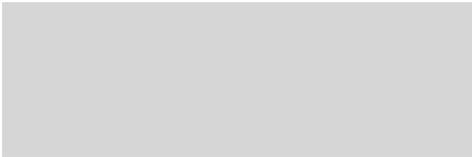
Petitioner:

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)

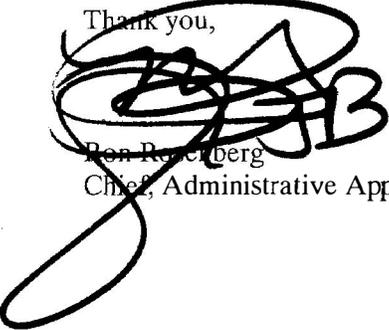
ON BEHALF OF PETITIONER:



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](http://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, California Service Center (hereinafter "the director"), denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129 visa petition, the petitioner describes itself as a transportation forwarding business. In order to employ the beneficiary in what it identifies as a position located within the "Logisticians" occupational category, with "Logistics Analyst" as its job title,<sup>1</sup> the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

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

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

#### I. STANDARD OF REVIEW

As a preliminary matter and in light of counsel's references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

\* \* \*

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

<sup>1</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O\*NET/OES) Code 13-1081, the associated Occupational Classification of "Logisticians," and a Level I prevailing wage rate.

\* \* \*

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

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

*Id.*

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the petitioner has not established that its specialty occupation claim is "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

## II. PROCEDURAL AND FACTUAL BACKGROUND

In the petition, which was signed on April 1, 2014, the petitioner indicated that it is seeking the beneficiary's services as a Logistics Analyst on a part-time basis at a rate of pay of \$25.54 per hour. In its April 1, 2014 letter of support, the petitioner's Vice-President described the petitioner as follows:

[The petitioner] is a California-headquartered freight forwarding and logistics company that controls the flow of goods and services from the source of production to the marketplace. Established since [REDACTED] we have 27 years of experience in the industry. [The petitioner] provides simple and efficient methods of operation process by offering

easy visibility and controllability for better management of customer's shipping processes and by provided dedicated customer service through our worldwide network.

The petitioner's Vice President described the proposed duties and provided the associated percentages of time involved in their performance as follows:

1. Use analytical and quantitative methods to understand, predict and enhance logistics processes between various clients, transporters and third party logistics firms in order to research the conduct of specific technical analyses such as capacity planning, warehouse analyses and transportation to effectuate a timely and smooth delivery of goods. (25%)
2. Formulate policies and direct operations of ocean shipping and air freighting and set strategies to ensure achievement of corporate objectives. (15%)
3. Review logistic policies and guidance, develop logistics support plans and provide input to other acquisition milestone documentations as well as conduct system design, alternative analysis and other logistics analyses. (15%)
4. Provide support and logistics expertise to logistics strategic planning efforts, business process reengineering efforts and various financial analyses. (10%)
5. Investigate problems and find root causes to develop solutions and compile periodic performance reports. (10%)
6. Establish and monitor customer service performance standards and maintain and develop management plans for key customers by working with clients to implement new strategic planning efforts. (10%)
7. Evaluate the performance of other international carriers and logistics intermediaries to improve and/or develop alternative logistic systems. (10%)
8. Ensure compliance with international and U.S. laws relating to customs, transportation activities. (5%)

The logistics analyst is responsible for overall logistics operations analysis and evaluation of [the] company's operations. The logistics analyst will maintain databases of logistics information. He will interpret data on logistics elements, such as availability, maintainability, reliability, supply chain management, strategic sourcing or distribution, supplier management, or transportation. He will provide ongoing analyses in areas such as transportation costs, parts procurement, back orders, or delivery processes and prepare reports on logistics performance measures. He will confer with logistics management teams to determine ways to optimize service levels, maintain supply-chain efficiency, or minimize cost. He will remotely monitor the flow of vehicles or inventory, using company's customized logistics information systems to track vehicles or containers. He will track product flow from origin to final delivery. He will recommend improvements to existing or planned logistics processes. He will develop and maintain models for logistics uses, such as cost estimating or demand forecasting. He will collaborate with the logistics team to improve efficiency, productivity and processes. He will prepare statistical data for contract negotiations and participate in negotiations. He will maintain logistics cost

analysis reports. He will lead the analysis and provide statistical information on the tracking of shipments, returns and inventory. He will evaluate existing capabilities and establish new systems and processes for the tracking, measurement, report and analysis of all transportation schedules. He will coordinate inbound/outbound traffic- ocean, air, land and domestic, maximizing the cost effectiveness of this function. He will provide reports to management regarding inventory, distribution and freight.

The petitioner's Vice President noted that the minimum requirement for the position is "Business, International Trade/Business, Economics, Logistics or closely related field of study."

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 21, 2014. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary.

On August 7, 2014, counsel for the petitioner responded to the RFE. Counsel submitted a letter, organization charts, excerpts from the *Occupational Outlook Handbook* and O\*Net, job postings, copies of the petitioner's position announcement and job postings; and documentation regarding current and former logistic employees.

Counsel provided additional details regarding the duties of the proffered position:

1. Use analytical and quantitative methods to understand, predict and enhance logistics processes between various clients, transporters and third party logistics firms in order to research the conduct of specific technical analyses such as capacity planning, warehouse analyses and transportation to effectuate a timely and smooth delivery of goods. (25%)
  - Maintain databases of logistics information.
  - Identify logistics areas for process improvement and cost savings to ensure expectations are met.
  - Define and formulate best logistics practices to meet and exceed on time delivery requirements.
  - Interpret data on logistics elements, such as availability, maintainability, reliability, supply chain management, cost analysis, strategic sourcing or distribution, supplier management and/or transportation.
  - Prepare statistical data for contract negotiations and participating in negotiations.
  - Maintain, track and analyze all inbound shipments, including working with carriers and 3PL providers.
  - Lead analysis and provide statistical information on tracking of shipments, cargos, returns and inventory.
  - Provide on-going analysis in areas such as transportation costs, back orders or delivery processes.

- Analyze new logistics proposals and make recommendations regarding carrier selection, shipment frequencies, etc to assure lowest total cost considering inventor carrying costs and transportation costs.
  - Collaborate with logistics team to determine ways to optimize service levels, maintain supply-chain efficiency or minimize costs.
2. Formulate policies and direct operations of ocean shipping and air freighting and set strategies to ensure achievement of corporate objectives. (15%)
- Collaborate with associates to improve efficiency, productivity and processes.
  - Confer with logistics team to determine ways to optimize service levels, maintain supply-chain efficiency or minimize cost.
  - Continually analyze freight costs and facilitate establishing plans to reduce.
  - Generate, analyze and report freight numbers for management review.
  - Process, file and track, and report all freight carrier over, short and damage claims and interpret results, determine responsibility, effect settlement and influence operational changes, if necessary.
  - Collaborate with IT management and staff to develop, define and document technical systems and operational requirements.
3. Review logistic policies and guidance, develop logistics support plans and provide input to other acquisition milestone documentations as well as conduct system design, alternative analysis and other logistics analyses. (15%)
- Prepare statistical data for contract negotiations and participate in negotiations.
  - Evaluate existing capabilities and establish new systems and processes for tracking, measurement, reporting and analysis of all traffic.
  - Develop and/or maintain models for logistics uses, such as cost estimating and demand forecasting.
  - Develop reports to accurately show current trends in balance, utilization and contribution.
  - Gather and interpret financial data. Present findings to Logistics Manager to help develop logistics strategies.
4. Provide support and logistics expertise to logistics strategic planning efforts, business process reengineering efforts and various financial analyses. (10%)
- Responsible for budget center; Maintain cost analysis reports.
  - Provide ongoing analysis in areas such as transportation costs, back orders, and/or delivery processes.
  - Analyze financial impact of logistic changes, such as routing, shipping modes, product volumes or mixes, or carriers.
  - Track monthly, quarterly and yearly freight costs and service performance metrics.

5. Investigate problems and find root causes to develop solutions and compile periodic performance reports. (10%)
  - Prepare and provide reports to management: inventory, distribution, freight.
  - Prepare reports on logistics performance measures.
  - Proactively identify problems and swiftly implement appropriate solutions.
  - Perform root-cause analysis to identify underlying conditions that need to be changed to prevent recurrences of similar unwanted outcomes.
  - Create action plans to effectively reduce the cost of root cause.
  
6. Establish and monitor customer service performance standards and maintain and develop management plans for key customers by working with clients to implement new strategic planning efforts. (10%)
  - Maintain and develop positive business relationships with customers' key personnel involved in or directly relevant to logistics activities.
  - Develop understanding of customers' needs and take actions to ensure that such needs are met.
  - Collaborate with other departments as necessary to meet customer requirements, to take advantage of sales opportunities or, in the case of shortages, to minimize negative impacts on a business.
  - Review logistics performance with customers against targets, benchmarks and service agreements.
  
7. Evaluate the performance of other international carriers and logistics intermediaries to improve and/or develop alternative logistic systems. (10%)
  - Coordinate inbound/outbound traffic; ocean, sea, air and domestic.
  - Maintain customer relations and communicate with carriers.
  - Establish and coordinate schedules with carriers and tender shipments.
  - Provide timely feedback to the company regarding carrier service failures.
  - Ensure outbound carrier meets delivery appointments and establish an on-time reporting mechanism for carrier review.
  - Manage subcontractor activities, reviewing proposals, developing performance specifications, and serving as liaisons between subcontractors and organizations.
  - Monitor performance, costing and competitiveness of third party distribution centers.
  - Analyze transportation costs to recommend carrier selection optimization opportunities.
  
8. Ensure compliance with international and U.S. laws relating to customs, transportation activities. (5%)

- Stay informed of logistics technology advances and apply appropriate technology to improve logistics processes.
- Monitor performance, costing and competitiveness of US and international customs brokers.
- Responsible for ensuring compliance with all relevant laws and regulations.
- Research trade references and other materials to stay abreast of changes in law, new technology and methods in logistics industry.

The logistics analyst is responsible for overall logistics operations analysis and evaluation of company's operations. The logistics analyst will maintain databases of logistics information. He will interpret data on logistics elements, such as availability, maintainability, reliability, supply chain management, strategic sourcing or distribution, supplier management, or transportation. He will provide ongoing analyses in areas such as transportation costs, parts procurements, back orders, or delivery processes and prepare reports on logistics performance measures. He will confer with logistics management teams to determine ways to optimize service levels, maintain supply-chain efficiency, or minimize costs. He will remotely monitor the flow of vehicles or inventory, using company's customized logistics information systems to track vehicles or containers. He will track product flow from origin to final delivery. He will recommend improvements to existing or planned logistics processes. He will develop and maintain models for logistics uses, such as cost estimating or demand forecasting. He will collaborate with the logistics team to improve efficiency, productivity and processes. He will prepare statistical data for contract negotiations and participate in negotiations. He will maintain logistics cost analysis reports. He will lead the analysis and provide statistical information on the tracking of shipments, returns and inventory. He will evaluate existing capabilities and establish new systems and processes for the tracking, measurement, report and analysis of all transportation schedules. He will provide reports to management regarding inventory, distribution and freight.

The director reviewed the information provided by the petitioner and counsel to determine whether the petitioner had established eligibility for the benefit sought. On September 23, 2014, the director denied the petition. On appeal, the petitioner submits a brief and documentation in support.

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we agree with the director that the evidence of record does not establish that the position as described constitutes a specialty occupation.

### III. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence of record does not establish that the position as described constitutes a specialty occupation.

A. Law

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, 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:

*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.

B. Preliminary Finding Regarding the Proffered Position's Duties and the Relative Complexity of the Position

Before proceeding further, upon consideration of the totality of all of the petitioner's duty descriptions, position descriptions, explanations, and assertions, as well as the complete complement of documents submitted in support of the petitioner's specialty occupation claim, we find that the evidence in the record of proceeding does not establish relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise.

While the petitioner and counsel may claim that the nature of the proposed duties and the position that they are said to comprise elevate them above the range of usual Logistician positions and duties by virtue of their level of specialization, complexity, and/or uniqueness, the evidence of record does not support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As evident in the job description quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More specifically, they lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. Take for example the following duty descriptions:

Maintain databases of logistics information

Prepare statistical data for contract negotiations and participate in negotiations.

Provide support in order to achieve financial targets and other departmental goals and objectives based on pre-established budgets using up-to-date business tools

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of the logistics information databases that the beneficiary will have to maintain. Nor does the record contain substantive explanation or documentation showing the volume and range of statistical data that the beneficiary would have to prepare or the level of participation in negotiations that the beneficiary will be involved in. Likewise, the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the above-referenced duties.

Overall, we find that the description of the duties of the proffered position do not adequately convey the substantive work that the beneficiary will perform within the petitioner's business

operations. The description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. Thus, we conclude that, as generally described as all of the elements of the constituent duties are, they do not - even in the aggregate - establish the nature of the position or the nature of the position's duties as more complex, specialized, and/or unique than those Logistician positions that do not require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent.

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 prevailing-wage level attached to the level of responsibilities and complexity of tasks inherent in the position. As indicated above, by submitting an LCA certified for a Level I prevailing-wage rate, the petitioner asserted that the proffered position only merited that prevailing-wage rate, the lowest of the four possible prevailing-wage rates.

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

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing-wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.<sup>2</sup> The 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.

<sup>2</sup> 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.

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 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Here, the petitioner's submission of an LCA certified for only a Level I, entry-level prevailing-wage signifies the petitioner's endorsement of the appropriateness of a characterization of the proffered position as a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on prevailing-wage levels, this wage rate indicates the petitioner's assertion 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 do not provide sufficient information regarding the petitioner's position to determine that the position proffered here is a specialty occupation position. The petitioner has not provided sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. 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 do not establish (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.

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

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

We recognize DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>3</sup> As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Logisticians" occupational category, and we will accordingly analyze the proffered position as such.

The *Handbook* states the following with regard to the duties of logisticians:

Logisticians analyze and coordinate an organization's supply chain—the system that moves a product from supplier to consumer. They manage the entire life cycle of a product, which includes how a product is acquired, distributed, allocated, and delivered. . . .

Logisticians typically do the following:

- Direct the allocation of materials, supplies, and finished products
- Develop business relationships with suppliers and customers
- Work to understand customers' needs and how to meet them
- Design strategies to minimize the cost or time required to move goods
- Review the success of logistical functions and identify areas for improvement
- Propose improvements to management and customers.

<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. This office's references to the *Handbook* are from the 2014-15 edition available online.

Logisticians oversee activities that include purchasing, transportation, inventory, and warehousing. They may direct the movement of a range of goods, people, or supplies, from common consumer goods to military supplies and personnel.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Logisticians," <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-2> (last visited May 27, 2015).

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

Logisticians may qualify for positions with an associate's degree. However, as logistics become increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's degree in business, industrial engineering, process engineering, or supply chain management.

*Id.* at <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited May 27, 2015).

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. First, the *Handbook* specifically states that "[l]ogisticians may qualify for positions with an associate's degree." Furthermore, although a bachelor's degree may be preferred<sup>4</sup> by "more" companies (though not even necessarily a majority), the *Handbook* makes clear that a bachelor's degree from the fields of business, industrial engineering, process engineering, or supply chain management would also suffice. The *Handbook's* recognition that a bachelor's or higher degree is "preferred" but not exclusively "required" by employers, strongly suggests that a bachelor's degree in a specific specialty, or the equivalent, is not a normal, minimum entry requirement for this occupation.

Additionally, although the *Handbook* indicates that a bachelor's or higher degree is preferred by more companies, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. The *Handbook's* recognition that a bachelor's degree in "business" would provide sufficient preparation for a career as a logistician is further evidence that a bachelor's degree in a specific specialty, or the equivalent, is not required for this position. Although a general-purpose bachelor's degree, such as a degree in business administration without further specification, 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 at 147. The fields referenced do not constitute a specific specialty; such a wide range of acceptable majors or academic concentrations is

<sup>4</sup> It should be noted that hiring preferences are not necessarily synonymous with minimum hiring requirements.

not indicative of a position requiring the theoretical and practical application of a distinct body of highly specialized knowledge in a specific specialty, as required by section 214(i)(1) of the Act and its implementing regulation at 8 C.F.R. § 214.2(h). A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Accordingly, as the *Handbook* indicates that entry into the Logisticians occupational group does not normally require at least a bachelor's degree or the equivalent in a specific specialty or its equivalent, it does not support the proffered position as satisfying this first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). That is, in light of the *Handbook's* information on the range of acceptable educational credentials for entry into the Logisticians occupational group, a position's inclusion within this group is not in itself sufficient to establish that position as one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry.

Additionally, the materials from DOL's Occupational Information Network (O\*NET OnLine) submitted by the petitioner do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O\*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O\*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require.

Nor are we persuaded by counsel's citation to the DOL's *Dictionary of Occupational Titles* (the *DOT*), and her argument regarding the value of an SVP rating of 7 to 8. The *DOT* does not support the assignments of SVP ratings of 7 to 8 as indicative that a particular position requires at least a bachelor's degree, or the equivalent, in a specific specialty. This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system,<sup>5</sup> and which states, in pertinent part, the following:

<sup>5</sup> U.S. Dep't of Labor, Office of Administrative Law Judges, OALJ Law Library, *Dictionary of Occupational Titles*, <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (last visited May 27, 2015).

As noted at section A.1.1 in DOL's Employment and Training Administration's Clearance Package Supporting Statement to the Office of Management and Budget, which is accessible on the Internet at [http://www.onetcenter.org/dl\\_files/omb2011/Supporting\\_StatementA.pdf](http://www.onetcenter.org/dl_files/omb2011/Supporting_StatementA.pdf), "The O\*NET data supersede the U.S. Department of Labor's (DOL's) *Dictionary of Occupational Titles* (*DOT*)," and the *DOT* "is no longer updated or maintained by DOL." It should also be noted that the *DOT* was last updated more than 20 years

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years

ago, in 1991. See <http://www.oalj.dol.gov/libdot.htm>, the homepage of DOL's Office of Administrative Law Judges (OALJ), online edition of the *DOT's* Fourth Edition, Revised in 1991.

- 7 Over 2 years up to and including 4 years
- 8 Over 4 years up to and including 10 years
- 9 Over 10 years

**Note: The levels of this scale are mutually exclusive and do not overlap.**

Thus, an SVP rating of 7 to 8 does not indicate that at least a four-year bachelor's degree is required to perform the duties of the proffered position or, more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. For all of these reasons, the DOT excerpt submitted is of little evidentiary value to the issue presented on appeal.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant, authoritative source establishing that the proffered position's inclusion within the Logisticians occupational group is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

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

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common 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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, the record contains no letters or affidavits from firms or persons in the industry attesting to such a requirement. Further, there is no evidence of a professional association having made a bachelor's degree in a specific specialty, or the equivalent, a minimum requirement for entry.

Next, we find that the job-vacancy announcements submitted by the petitioner with the initial H-1B submission, in response to the director's RFE, and on appeal, do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. 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 are parallel to the proffered position, as required for evidence to merit consideration under the first alternative prong is position. In this regard, we make several specific findings.

First, we note that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions* among *similar organizations* (emphasis added)." For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). The prints-outs from [www.manta.com](http://www.manta.com) provided by the petitioner do not suffice to establish this criterion, as the information is general in nature.

In addition, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting and actual hiring history for the type of jobs advertised, let alone how representative they are of the industry practice in those areas.

We also see that the extensive experience that approximately twenty-five of the job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than that of the proffered position.<sup>6</sup> However, as noted above, the petitioner's

<sup>6</sup> By way of example, the [redacted] advertisement for a "Logistics Manages" states "MBA degree or related, or a BA/BS degree plus 5 years of progressive experience in field or related." The [redacted] advertisement for a "Logistics Analyst" states "1 year experience in forwarding/logistics, basic accounting, customer service, and communicating with customers and internally at all levels." [redacted] advertisement for a "Logistician" states "Require MBA, Master's degree in Logistics, or its equivalent, i.e., BA plus 5 years of experience in related fields." [redacted] advertisement for a "Logistics Procurement Analyst" states "At least 4-years experience in a logistics-related field, preferably US domestic transportation." The [redacted] advertisement for a "Logistics Manger" states "5+ years of Supply/Chain Logistics management experience in a manufacturing environment, preferably within the aerospace industry." The extensive academic background and/or experience that these job

submission of an LCA certified for a Level I wage rate suggests that the petitioner regards the proffered position as a comparatively low, entry-level position relative to others within its occupation and one in which the beneficiary would only be expected to possess a basic understanding of the occupation. It is therefore difficult to envision how these attributes assigned to the proffered position by the petitioner by virtue of its wage-level designation on the LCA would be parallel to the positions described in these job vacancy announcements. So, the job-vacancy advertisements do not establish that the advertised positions are "parallel" to the proffered position.

Furthermore, while some of the advertisements bear the title "Logistician," the occupational group identified in the petitioner's certified LCA, or "Logistics Analyst," the title of the proffered position, it is the nature of the duties comprising the advertised positions that would determine whether those positions are in fact parallel to the proffered position. However, we see that the duty descriptions of the advertised positions and their constituent duties are not substantially similar to the proffered position's duties as stated in the petitioner's letters.

In addition, approximately fifteen of the submitted advertisements do not specify a requirement for a bachelor's or higher degree in a specific specialty or its equivalent. For example, the [REDACTED] advertisement for a "Logistics Transportation and Compliance Analyst" only states "College degree required, but can omit in lieu of direct experience." The [REDACTED] advertisement for a "Logistics Analyst [REDACTED] OH" only states "Hold a minimum of a Bachelor's degree." The [REDACTED] advertisements for an "SCM/Logistic Sales Manager" and an "International Forwarding General Manager" only state "Bachelor's degree and/or equivalent experience." The [REDACTED] advertisement for a "Senior Logistician" states "Bachelor's Degree." Likewise, the [REDACTED] advertisement for a "Logistics Planning Analyst" states "Education Level: Bachelor's Degree" with no indication that the bachelor's degree must be in any particular area or equivalent to a bachelor's or higher degree in a specific specialty.

As the submitted vacancy-announcements are not probative evidence towards satisfying this criterion, further analysis of their content is not necessary.

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.

Next, we find that the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

advertisements specify as hiring requirements suggest that they involve the application of greater occupational knowledge than the proffered position.

We here refer the petitioner back to our comments and findings with regard to the generalized and relatively abstract terms in which the proposed duties and the position that they are said to comprise were presented. In this particular case, the evidence of record does not credibly demonstrate that the duties the beneficiary will 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. The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of that position. Rather, we find that as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Logisticians" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

Counsel and the petitioner's assertions are further undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a prevailing-wage level that is only appropriate for a position in which the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

As the evidence of record therefore does not establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the position.

Our review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that the imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<sup>7</sup>

<sup>7</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner submitted an LCA that had been certified for a Level I wage-level, which is appropriate for use with a comparatively low, entry-level position relative to others within the same occupation.

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. Thus, the director provided the petitioner with an additional opportunity to establish a history of recruiting and hiring for the proffered position only individuals with a bachelor's or higher degree in a specific specialty, or the equivalent. In response to the RFE, counsel noted that the petitioner has always required at least a bachelor's degree for all logistics position. In support, the petitioner submitted organizational charts, job position announcements, employee documents, including tax documentation, pertaining to four<sup>8</sup> employees that comprise its logistics departments, and documentation pertaining to a previous logistics employee, [REDACTED]. The petitioner also submitted evidence that one of the petitioner's employees in the Logistics department, [REDACTED] was granted H-1B approval.

To begin, we note that the petitioner did not submit any substantive information corroboratively detailing the four employees' actual job duties, their pay level, and other relevant factors such as when their employment in the position began; whether they had their degree by that time; and the educational requirements, if any, that the petitioner may have specified in recruiting efforts for the job in which the referenced individuals are now employed. The petitioner also did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. It is unclear whether the duties and responsibilities of these individuals are the same or related to the proffered position. As for the petitioner's current H-1B employee, [REDACTED], the petitioner did not submit copies of the prior H-1B petition(s) and the respective supporting documents.<sup>9</sup> Thus, the submission is not probative in

---

<sup>8</sup> Although counsel listed five current employees in the Logistics department, counsel notes that one of those employees, [REDACTED] has an "H1B pending."

<sup>9</sup> Nevertheless, even if this evidence had been submitted and even if it had been determined that the facts in those cases were analogous to those in this proceeding, those decisions are not binding on USCIS. While 8 C.F.R. § 103.3(c) provides that this office's precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church*

establishing this criterion of the regulations, and we accord little to no weight to the petitioner's unsubstantiated assertions about the individuals employed in the Logistics Department.

Furthermore, with respect to the petitioner's past job position announcements submitted in response to the director's RFE, the evidence does not establish that petitioner's asserted degree requirement for the proffered position is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position. This determination is strengthened by the petitioner's submission as the supporting LCA one that was certified for the lowest wage-level, which is appropriate for a comparatively low, entry-level position relative to others within its occupation.

As the evidence of record does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

As reflected in this decision's earlier discussions and findings regarding record's duty descriptions - which we hereby incorporate into this present analysis - the nature of the proposed duties as described in the record of proceeding do not show the level of specialization and complexity required to satisfy this criterion. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or the equivalent. By the same token and as evident in the duty descriptions themselves, the nature of the proposed duties are not developed with sufficient substantive detail to distinguish them from the nature of the duties of positions within the Logisticians occupational group whose performance does not require the

*Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, this office's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

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 at a Level I wage. As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level, entry position relative to others within the same occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For the reasons discussed above, we conclude that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that the duties of the proffered position are 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. The evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Nor do we find the cases cited by counsel on appeal persuasive.

With regard to *Young China Daily v Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), we note that while USCIS should not limit its review to the size of a petitioner and must consider the actual responsibilities of the proffered position, we also note that it is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position. The petitioner's reliance on [REDACTED] is therefore not persuasive.

Regardless, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Counsel also cites the unpublished court decision in *Unico American Corp. v. Watson*, \_\_\_ F. Supp. \_\_\_, 1991 WL 11002594 (C.D. Cal. 1991), to state that we should give deference to the employer's view, should consider fully the employer's evidence and should not rely simply on standardized government classification systems (e.g., the *Handbook*). Counsel, however, has furnished no evidence to establish that the facts of the instant petition are analogous to those in this unpublished decision. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In any event, we are not running counter to the proposition for which counsel cites this

decision, for we base our decision upon the totality of the evidence in the record of proceeding bearing upon the specialty-occupation issue, and without sole or excessive reliance upon the relevant information contained in the *Handbook*.

Again, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. at 715. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on us outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

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

#### IV. BENEFICIARY'S QUALIFICATIONS

The director also found that the beneficiary did not appear to be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has not established that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications.

#### V. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we find that the evidence does not 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 appeal will be dismissed and the petition will be denied.

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

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