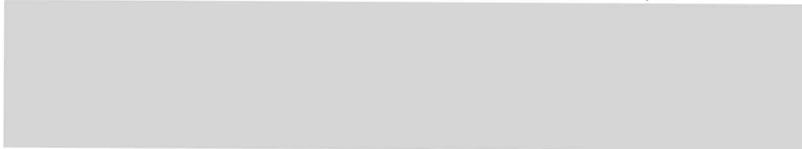




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 26 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 before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as 41-employee office supply company established in [REDACTED]. In order to employ the beneficiary in what it designates as "Consultant" position at a salary of \$28.24 per hour,¹ 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).

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

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

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

II. SPECIALTY OCCUPATION

The primary issue is whether the petitioner has demonstrated by a preponderance of the evidence that it will employ the beneficiary in a specialty occupation position.²

¹ The LCA submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Management Analysts" occupational classification, SOC (O*NET/OES) Code 13-1111, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels. However, we note that the record of proceeding does not contain a certified LCA that properly corresponds to the petition. Each LCA has a unique identification number. On page 4 of the Form I-129, the petitioner reported that the corresponding LCA for the petition was LCA Case Number [REDACTED]. The petitioner submitted an LCA with a Case Number [REDACTED]. The record of proceeding contains no explanation for this inconsistency. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that the Form I-129 petition is supported by an LCA that corresponds it. Here, the LCA referenced on the Form I-129 does not correspond to the LCA provided to USCIS by the petitioner.

² The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

A. Law

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

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must 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. Analysis

Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of the record does not establish that the position as described constitutes a specialty occupation.

In its support letter dated March 26, 2014, the petitioner stated that the beneficiary's duties include the following:

- Utilize working knowledge of standard business policies to ensure that our company has a workable budget and implement policies and procedures to meet that budget.
- Create, examine and make suggestions regarding the changes of forms to increase efficiency in the flow of information throughout the company.
- Implement data gathering methods, including personal observations, to obtain unit functions, work performed, as well as the equipment, personnel and methods used to achieve final production.
- Collect and prioritize information on all existing problems and procedures within our company.
 - Analyze the collected data in order to develop solutions as well as additional or alternative methods of completing the same tasks.
- Develop techniques and implement them to ensure that management has access to records, including ensuring the ease of filing and retrieving information while assuring security and compliance of the said files.
- Conduct on-site interviews and confer with personnel concerned to determine personnel, equipment and materials needed for production while ensuring that newly implemented systems and procedures are operating as they are supposed to.
- Develop and implement training manuals and instruct workers on use of new production methods, reporting procedures and equipment use according to [REDACTED] policy.
- Make bi-monthly reports to management to ensure that all employees are in agreement with newly implemented or to-be-implemented policies and procedures.
- Study organizational problems and efficiency improvement areas to plan new procures affecting organizational change, production methods, cost analysis, and inventory control.
- Document findings of all data collected and prepare reports and recommendations for new implementation ideas.
- Analyze forms and reports and then meet with employees regarding format, purpose, and distribution improvements, and inquire for any suggestions about further problem areas to improve.

The LCA was certified for use with a job prospect within the "Management Analysts" occupational category, SOC (O*NET/OES) Code 13-1111, and a Level I (entry-level).³

³ The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The petitioner was asked to submit probative evidence demonstrating the skills required to perform the duties of the proffered position. In its RFE response letter, the petitioner expanded the duties of the proffered position by adding additional duties to the previously stated duties as follows:

- Confer with management to identify key business objectives each month, and expediently create solutions to achieve these objectives.
- Innovate solutions to office problems so that we [REDACTED] can ensure that inventory is properly controlled and that problem areas are quickly solved to avoid slowing the growth of the company.
- Fill voids in business due to lack of internal bandwidth required to address critical issues within our company.

* * *

- Analyze and interpret financial statements, reporting, and ratios to help determine the best course of action for our company's budgeting.
- Consult with management to make suggestions about necessary changes to positions, including creating new positions and eliminating positions that are no longer necessary.

* * *

- Produce monthly reporting packages and communicate the results to management.

On appeal, the petitioner states that it is "testing three new softwares" that will help track and inventory the supplies its clients use. The petitioner further states:

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.

As Project Management Consultant, [the beneficiary] will be tasked with researching the needs of our current and prospective clientele, improvise a testing prototype, test with method suits best the needs of that particular client, evaluate the results and make recommendations as to which method or software is the most relevant for our client's needs. We can then present to the clients the results of our testing and work out a system that will make the tracking and ordering supplies easier for them. By coming up with an efficient tracking system, we will be able to show to our existing clients that we are responsive to their needs and we are able to deliver better service than our big-name competitors. At the same time, we are able to attract prospective clients and expand our client base.

The petitioner states that a "Bachelor's degree in an analytical field such as business administration, operations management or a closely related field" is required for the proffered position.

As a preliminary matter, we note discrepancies between the duties of the proffered position that the petitioner provided in the various stages of the petitioning process. While the duties presented in the support letter and the RFE response letter primarily involve business operations, finance, and training, the duties presented on appeal focus on determining proper software for the business. The record has no explanation regarding the change in the duties of the proffered position.⁴ These inconsistencies undermine the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, we find that upon consideration of the totality of all of the petitioner's duty descriptions, the evidence of record does not establish the depth, complexity, or level of specialization, or substantive aspects of the matters upon which the petitioner claims that the beneficiary will engage. Rather, the duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. For example, the petitioner states that the beneficiary will "[f]ill voids in business," "[p]roduce monthly reporting packages," and "[d]ocument findings of all data collected" without providing specifics of such duties in relation to the petitioner's operations. Further, we find that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to

⁴ The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations and, thus, cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. For these reasons alone, the evidence of record does not demonstrate that the proffered position is a specialty occupation.

We now turn the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we will first address the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Management Analysts" occupational category.

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

Most management analysts have at least a bachelor's degree. The Certified Management Consultant (CMC) designation may improve job prospects.

Education

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA).

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

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Management Analysts," available at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited June 24, 2015).

The *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into this occupational category; rather the *Handbook* indicates at most that a bachelor's or higher degree may be a common preference, and that the degree preference may be fulfilled by degrees from disparate fields, including a general degree, such as a degree in business.⁶ *See id.* 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 at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a management analyst does not normally require at least

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

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

a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

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

With respect to the position evaluation from Dr. [REDACTED] we note that he finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in management, accounting or related business administration degree. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also 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 supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring 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 at 147. Therefore, the letter from Dr. [REDACTED] does not support the petitioner's assertion that the proffered position qualifies as a specialty occupation.

Furthermore, Dr. [REDACTED] description of the position upon which he opines does not indicate that he considered, or was even aware of, the fact that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation which, as discussed above, signifies that the beneficiary is only expected to possess a basic understanding of the occupation. We consider this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for his ultimate conclusion as to the educational requirements of the position upon which he opines. The petitioner's LCA wage-level designation does not support Dr. [REDACTED] conclusion that the

proffered position requires "complex" duties to be performed. Dr. [REDACTED] omission of such an important factor as the LCA wage-level significantly diminishes the evidentiary value of his assertions.

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

The evidence of record of proceeding does not establish 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. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the evidence of record does not satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Here and as already discussed, the evidence of record does not establish that the petitioner's proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

We will next address the job advertisements submitted by the petitioner. The record of proceeding contains copies of seven job advertisements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that the petitioner's reliance on the job advertisements is misplaced.

In the Form I-129 petition, the petitioner describes itself as a 41-employee office supply company, established in [REDACTED]. The petitioner states that its gross annual income is over \$7.2 million and its net annual income is over \$3.4 million.

For the petitioner to establish that an organization in its industry 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

criteria, 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.

Upon review, we find that the record does not demonstrate 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 (3) located in organizations that are similar to the petitioner.⁷

For example, in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner provided copies of job advertisements. However, we find that the petitioner's reliance on these job postings is misplaced, as the advertising organizations do not appear to be similar to the petitioner. More specifically, the advertisements include:

- [REDACTED] (distributor of shipping, packaging and industrial supplies);
- [REDACTED] (business development group that help small and medium-size business maintain positive cash flow, control cost and accelerate profitable growth);
- [REDACTED] (provides expertise in sales operations);
- [REDACTED] (management consulting services);
- [REDACTED] (management consulting services);
- [REDACTED] (consultant to Federal U.S. Government agencies); and,
- [REDACTED] (education).

The petitioner did not state which aspects or traits (if any) it shares with the advertising organizations. 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. The petitioner did not supplement the record of proceeding to establish that the advertising organizations are similar to it.

Moreover, these advertisements do not appear to be for parallel positions. More specifically, the position with [REDACTED] requires five or more years of experience in Warehouse Management Systems in a multi-site warehouse/distributing setting; the position with [REDACTED] requires ten years of executive, sales or business ownership experience; the position with [REDACTED] requires project planning and scheduling experience; the position with [REDACTED] requires a Master's degree or higher and three years of experience; the position with [REDACTED]

⁷ See 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

requires five or more years of experience in managing government projects; and the position with requires at least three years of experience in information technology and two years of experience in project management. The petitioner designated the proffered position on the LCA as a Level I position, and as stated earlier, individuals working in positions at this wage level are expected to have only a basic understanding of the occupation and perform routine tasks that require limited, if any, exercise of judgment. The advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

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.⁸

Thus, based upon a complete review of the record, we find that the petitioner has not established that a requirement for at least a bachelor's 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 (3) located in organizations that are similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

⁸ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

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 "Management Analysts" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

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

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, we incorporate by reference and reiterate our earlier discussion that the LCA indicates that the position is a low-level (entry-level) position relative to others within the occupation.⁹ Based upon the wage rate, the beneficiary is only required to perform routine tasks that require limited, if any, exercise of judgment. Accordingly, given the *Handbook's* indication that typical positions located within the "Management Analysts" occupational category do not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited exercise of judgment would contain such a requirement. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Even a position involving a Level II wage, which would exceed the complexity of the one proposed by the petitioner, would involve only "moderately complex tasks that require limited judgment."

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

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

⁹ 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.

normally review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

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

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

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

We further 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 (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the petitioner's has not demonstrated that its proffered position is one with specialized and complex duties 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 substantially higher prevailing wage.¹⁰

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

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

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

III. CONCLUSION AND ORDER

The petition will be denied and the appeal dismissed for the above stated reason.¹¹ 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.

¹⁰ 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.

¹¹ As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.