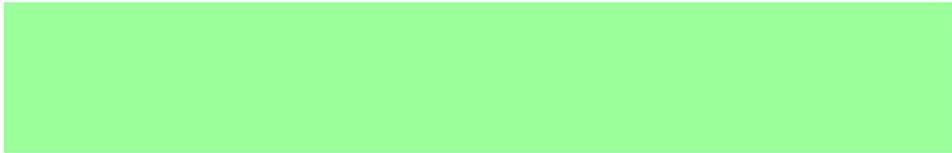
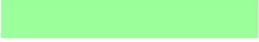




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 03 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 

Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Fresh cut fruits and vegetables manufacture and wholesale" business with approximately 180-200 employees established in [REDACTED]. In order to employ the beneficiary on a part-time basis as a "Logistics Analyst" from October 1, 2014 to August 1, 2017, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

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

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

I. FACTUAL AND PROCEDURAL BACKGROUND

As noted above, the petitioner indicated that it is a "Fresh cut fruits and vegetables manufacture and wholesale" business with approximately 180-200 employees. The petitioner seeks to employ the beneficiary in a part-time logistics analyst position.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Logistics Analyst," and that it corresponds to Standard Occupational Classification (SOC) code and title "13-1081, Logisticians," from the Occupational Information Network (O*NET). The LCA states that the proffered position is a Level I, entry-level, position.

On the LCA and on the H Classification Supplement to Form I-129 (Form I-129 H-1B Data Collection Supplement), the petitioner listed its North American Industry Classification System (NAICS) Code as 424480, "Fresh Fruit and Vegetable Merchant Wholesalers."¹

¹ U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "424480, Fresh Fruit and Vegetable Merchant Wholesalers," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Feb. 27, 2015).

In a letter dated March 5, 2014 submitted with the petition, the petitioner described itself as a "successful and growing manufacturer of Fresh Cut Fruits and Vegetables . . . [that] buy[s] tons of fruits and vegetables each day, cut and process those fruits and vegetables and distribute them to [its] customers." The petitioner asserted that the nature of its business is "complex," in that it buys large quantities of fresh produce, processes them to the specifications of each customer, and delivers them all within 24 hours or shorter. Because the petitioner works in what it asserts is an "office and plant environment [that] is necessarily a very fast paced one in which logistics is essential," the petitioner seeks to employ the beneficiary in the new position of a "Logistics Analyst, (Finance)." The petitioner explained that its major goal through this hiring is "to implement and apply logistics systems in the area of company finance." The petitioner then described the duties and requirements of the proffered position as follows:

Position Offered

The Logistics Analyst will, using techniques of financial logistics analysis, applied economics, quantitative methods, and principles of financial and business management analyze and interpret data in order to facilitate revenue growth through improved asset utilization, cost reduction and supply chain management.

Specifically, the Logistics Analyst, Finance will have the following job duties:

- Provide on-going analysis of company finances and profitability from the point of view of logistics and inform management by means of reports. (15%)
- Develop daily, weekly, monthly and yearly forecasts, collaboratively, involving every link of the supply chain. (15%)
- Integrate logistics with business practices, sales and accounting. (15%)
- Provide ongoing logistics analysis of product procurement, market supply and demand data in order to make recommendations to company purchasing department. (15%)
- Meet with management and make recommendations for the optimization of supply-chain efficiency. (10%)
- Define and measure service requirements by market sectors. (10%)
- Using knowledge of financial management, improve and maintain models for cost estimating and demand forecasting. (10%)
- Improve and maintain databases of logistics information related to finance. (10%)

In the same letter, the petitioner asserted that the proffered position "qualifies as a specialty occupation because it requires the high [*sic*] specialized and complex knowledge of Business and Financial Management, Applied Economics, and Quantitative Management and Logistics." The petitioner further asserted that the minimum requirement for the proffered position is "a bachelors [*sic*] degree or higher in the field of Finance, Applied Economics or a closely related field at an accredited U.S. university or college or its foreign equivalent." The petitioner stated that the proffered position "is entry level" and will be "directly supervised by management." The petitioner

further states that the proffered position is "entry level" and that the beneficiary will be "directly supervised by management."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE.

In response to the RFE, the petitioner submitted a letter dated July 21, 2014 asserting that the duties of the proffered position are "so specialized and complex that [they] can be performed only by a person with a bachelor's degree or higher in the field of Finance or closely related field." The petitioner repeatedly characterized the skills and knowledge needed to perform the proffered duties as "complex" and "highly complex." The petitioner provided the following explanation of why the proffered position has "very complex financial duties" in comparison to other businesses that do not necessarily require a logistics analyst with a specialized degree:

While there may be Logistics Analyst positions, for example, that arrange transport as a primary duty, that do not require a person with a specialized degree, ours is one which has very complex financial duties. These duties are complex and have specific educational demands, and cannot be performed by someone not in possession of one of the limited number of college degrees, specifically, Finance, Applied Economics or closely related field.

The fresh-cut product wholesaler business is highly competitive. It is a marketplace that is complex and fast-moving. Our business profit rely almost entirely on our skills in buying the bulk produce at the right moment for the right price and then producing and distributing the fresh cut produce within hours of acquiring the bulk product.

Unlike other business that can warehouse their products we are entirely dependent on precise supply and demand forecasting and logistics analysis.

* * *

We have dozens of types of produce with different properties that are purchased locally very early in the morning that must be cut and produced and distributed within hours. This process requires different configurations of labor and resources. At the same time, we must calculate and consider profitability. Our ability to configure our resources and to make these important financial calculations *is* our competitive edge.

* * *

Due to the growth of our company, a major goal for us right now is to implement and utilize logistics systems that will allow us to combine like orders and process them on the same commodity production line. At the moment each of our production lines processes one order at a time. We now intend to utilize principles of logistics to

combine like orders and by so doing make our utilization of labor and other resources more efficient. This goal is central to our continued growth and success in the highly competitive business of fresh cut produce. The position of Logistics Analyst is, therefore, essential to our company allowing us to maintain our competitive position.

The petitioner identified the following skills, knowledge, and/or coursework as necessary for the position: Applied Economics, Quantitative Methods in Finance, Financial Analysis, and Financial Management. The petitioner reiterated that such skills, knowledge, and/or coursework "can only be gained in a bachelors or higher degree program in the field of Finance or a closely related field."

The director denied the petition, concluding that the evidence did not establish the proffered position as a specialty occupation.

The petitioner filed the instant appeal. The petitioner reaffirms that the proffered position qualifies as a specialty occupation because the nature of the duties is "so specialized and complex that [the] knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree or higher" under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner asserts that the director adjudicated the case "according to the wrong standard" by requiring the petitioner to show why the proffered position is different from other logistics analyst positions.

II. THE LAW

The issue to be addressed is whether the director correctly determined that the petitioner failed to establish that the proffered position is a specialty occupation. To meet its burden of proof on this issue, 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, supra*. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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, United States Citizenship and Immigration Services (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.

III. DISCUSSION

Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through attainment of at least a baccalaureate degree in a specific discipline. We find that the petitioner has not done so here.

Here, the petitioner describes the duties of the proffered position in generalized and duplicative terms. For instance, the petitioner states that the beneficiary will "[p]rovide on-going analysis of company finances and profitability from the point of view of logistics and inform management by means of reports." The petitioner does not further define what specific tasks constitute the overarching duty of "[providing] on-going analysis" or what it specifically means by the term "company finances and profitability." Moreover, the petitioner does not differentiate this duty from

other duties that appear to encompass the same elements, such as "[p]rovide ongoing logistics analysis of product procurement, market supply and demand data in order to make recommendations to company purchasing department," and "[m]eet with management and make recommendations for the optimization of supply-chain efficiency."² As another example, the petitioner states that the beneficiary would "[i]ntegrate logistics with business practices, sales and accounting." The petitioner has not explained what specific tasks constitute the broadly-termed duty of "[i]ntegrate logistics," or how this particular duty differs from other duties that also involve providing logistics analysis and recommendations. Taken as a whole, the petitioner's generalized and duplicative statements do not provide sufficient substantive information about the proffered position and its constituent duties.

Furthermore, any claims about the complex nature of the proffered duties as compared to other logistics analyst positions are inherently contradictory to the level of responsibility conveyed by the Level I wage level indicated on the LCA by the petitioner. As will be discussed in more detail *infra*, the petitioner designated the wage level for the proffered position as a Level I, entry-level, position, which corresponds to "job offers for beginning level employees who have only a basic understanding of the occupation . . . [and who] perform routine tasks that require limited, if any, exercise of judgment."³ Considering that the LCA is certified for a Level I entry-level position, we must question the veracity of the petitioner's descriptions 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).

Overall, considering the generalized and duplicative descriptions of the proffered position, as well as the inconsistencies presented by the position's Level I wage level designation, we find the evidence of record insufficient to establish the substantive nature of the proffered position and in what capacity the beneficiary will actually be employed. The failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or

² To illustrate, the term "company finances and profitability" is so broad that it can reasonably encompass the elements of "product procurement, market supply and demand data" as well as "supply-chain efficiency."

³ 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.

its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the evidence does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. For this reason, the appeal will be dismissed and the petition denied.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will address in detail the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Assuming, *arguendo*, that the duties of the proffered position as described by the petitioner would in fact be the duties performed by the beneficiary, we will first address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This criterion requires that the petitioner establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Bureau of Labor Statistic's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ As previously discussed, the petitioner designated the proffered position in the LCA under the occupational category "Logisticians."

We have reviewed the chapter of the *Handbook* entitled "Logisticians" including the sections regarding the educational requirements for this occupational category. It states, in pertinent part:

How to Become a Logistician

Although an associate's degree may be sufficient for some logistician jobs, a bachelor's degree is typically required for most positions. Work experience in a related field is helpful for jobseekers.

Education

Logisticians may qualify for positions with an associate's degree. However, as logistics becomes 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.

Bachelor's degree programs often include coursework in operations and database management, decisionmaking, and system dynamics. In addition, most programs offer courses that train students on software and technologies commonly used by logisticians, such as radio-frequency identification (RFID).

⁴ All of the references to the *Handbook* are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

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-4> (last visited Feb. 27, 2015).

The *Handbook* does not support a finding that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Specifically, while the *Handbook* states that "a bachelor's degree is typically required for most positions" and that "companies prefer to hire workers who have at least a bachelor's degree," it does not specify whether the bachelor's degree must come from any specific field(s) of study. The *Handbook's* statement that "[m]any logisticians have a bachelor's degree in business, industrial engineering, process engineering, or supply chain management" does not equate to a *requirement* of a degree in those fields, as supported by the fact that the petitioner itself does not require a degree in those fields. Moreover, a *preference* for a degree is not a *requirement*. The occupation also accommodates entry into the profession for individuals with less than a bachelor's degree, as the *Handbook* specifically states that "[l]ogisticians may qualify for positions with an associate's degree."

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

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

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

Here and as already discussed, the proffered position is not one for which the *Handbook*, or other authoritative sources, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. The record does not contain letters, affidavits, or any other evidence pertinent to this criterion. Accordingly, 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.

As previously discussed, the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. That is, the evidence of record is insufficient to demonstrate the substantive nature of the duties the beneficiary will perform on a day-to-day basis such that complexity or uniqueness can even be developed. Furthermore, the petitioner has neither made any express claims nor submitted any evidence establishing that the particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The petitioner has not expressly asserted eligibility nor submitted evidence under this criterion. We note that the proffered position is a new position, and that this is the first time the petitioner is hiring for the position. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. We cannot conclude that the petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁵

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

⁵ 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 submitted documentation fails to support the assertion that the proffered position satisfies this criterion of the regulations. As previously discussed, the petitioner has failed to credibly demonstrate the duties the beneficiary will perform on a day-to-day basis such that specialization or complexity can be sufficiently developed as an aspect of the proffered position.

Furthermore, it is important to note that the petitioner designates the proffered position as a Level I (entry level) position on the LCA.⁶ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance."⁷ A Level I wage rate 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.

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the

⁶ Wage levels should be determined only after selecting the most relevant 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.

⁷ 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. 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.

occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. The petitioner's designation of the proffered position as a Level I position and the petitioner's assertion that it is an entry-level position undermines the credibility of any claim as to the proffered position or the duties comprising it as being particularly specialized and complex.

On appeal, the petitioner asserts that the nature of its operations necessitates a logistics analyst position with a specialized degree in or related to Finance, as the proffered position has "very complex financial duties." In particular, the petitioner asserts that the "fresh-cut product wholesaler business is highly competitive[,] . . . complex and fast-moving," and that its "business profit rel[ies] almost entirely on our skills in buying the bulk produce at the right moment for the right price and then producing and distributing the fresh cut produce within hours of acquiring the bulk product." The petitioner further differentiates itself from other businesses "that can warehouse their products," claiming that it is "entirely dependent on precise supply and demand forecasting and logistics analysis." The petitioner has previously emphasized the fact that its products, i.e., fresh-cut produce, must be purchased, processed, and delivered within 24 hours or shorter.

The petitioner has not, however, submitted sufficient evidence to corroborate its assertions. For instance, there is no corroborating evidence in the record establishing that the particular nature of the petitioner's products and/or industry makes the proffered position and its constituent duties more specialized and complex than other logistics analyst positions. While we acknowledge the petitioner's claims that its business environment is "fast moving" and that its profits rely on buying materials "at the right moment for the right price," these broad statements, without more, are insufficient to differentiate the petitioner from other businesses in which the same may hold true. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Here, it is important to note the section of the *Handbook* regarding the work environment for the "Logisticians" occupational classification which section states, in pertinent part:

Although logisticians work in nearly every industry, the majority is concentrated in manufacturing and the federal government. About 25 percent of logisticians worked in manufacturing. . . . The job can be stressful because logistical work is fast paced. Logisticians must ensure that operations stay on schedule, and they must work quickly to solve any problems that arise. Some logisticians travel to visit manufacturing plants or distribution centers.

Id. at <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-3> (last visited Feb. 27, 2015).

As such, the petitioner's emphasis on the fast-paced environment in which it conducts business is insufficient to distinguish the proffered position from other logistics analyst positions, for which the *Handbook* indicates a baccalaureate or higher degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry.

While the petitioner asserts that the proffered position has "very complex financial duties," it has not specifically identified and explained which of the proffered duties are "very complex" and why they are more complex than the duties performed by other logistics analysts. Moreover, the petitioner has not adequately explained why the knowledge required to perform the duties of the proffered position is usually associated with the attainment of a baccalaureate or higher degree in or closely related to Finance, or its equivalent. The petitioner asserts that the proffered position will apply skills, knowledge, and/or coursework in Applied Economics, Quantitative Methods in Finance, Financial Analysis, and Financial Management, but the petitioner has not provided sufficient details explaining the factual basis for its claims. Moreover, the petitioner has not explained and documented how these courses necessarily represent an established curriculum leading to a bachelor's degree or higher in or closely related to Finance. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

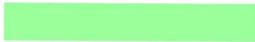
Finally, we find unpersuasive the petitioner's assertion that it is not required to differentiate the proffered position from other logistics analyst positions. Where, as here, the record of proceeding indicates that the proffered position does not qualify as a specialty occupation simply by virtue of its occupational classification, the petitioner must establish why the proffered position does qualify as a specialty occupation in contrast to other positions under the same occupational classification. Under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), this inherently requires a comparison of the level of specialization and complexity of the duties of the proffered position against that of other logistics analyst positions. Regardless, as we observed above, the petitioner has undermined its own assertion in its attempt to distinguish the proffered position from other logistics analyst positions in the transportation business or from other businesses that can warehouse their products.

Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. CONCLUSION

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

(b)(6)



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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.