



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 03 2015**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:
[REDACTED]

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 (hereinafter "director") denied the nonimmigrant visa petition. Pursuant to a motion, the director reopened the matter, then denied the visa petition again. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a seven-employee "Online store" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Financial Analyst" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On the previous motion and now on appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE) and the petitioner's response to the RFE; (3) the initial decision of denial, dated October 2, 2013; (4) the Form I-290B and the petitioner's submissions on motion; (5) the Notice of Intent to Deny (NOID) and the petitioner's response to it; (6) the second denial letter, dated August 5, 2014; and (7) the Form I-290B and the petitioner's submissions on appeal.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a financial analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011, Accountants and Auditors, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in business administration with an option in accounting from [REDACTED].

The petitioner also submitted (1) a document headed, "Re: Temporary Job Offer," dated March 28, 2013, addressed by the petitioner's president to the beneficiary; (2) a support letter, also dated March 28, 2013, from [REDACTED] signing as the petitioner's president; and (3) a letter, dated March 29, 2013, from counsel.

The Temporary Job Offer identifies the proffered position as a financial analyst position and states the following as to the duties of the proffered position:

[The beneficiary's] job duties [in the proffered position] will include, but not limited to the following.

Apply principles of accounting and finance to analyze records of present and past operations, trends and costs, estimated and realized revenues, administrative commitments, and obligations by interpreting and analyzing accounting records, including financial statements to determine the firm's profitability and to assist management in assessing its effectiveness. Conduct financial analysis including ratio and trend analysis, working capital analysis, cash flow analysis, budget analysis and financial forecasting to assist management in financial planning and control, and to improve cost containment, profit coordination and profit control. Work under supervision to prepare, monitor, maintain, cash flow control, cost control reports, distribution, production programs, operating costs of profit-loss studies and to support forecasting and pricing; and to interface with management to determine the firm's profitability for effective planning and budget adjustments. Advise management on matters, such as effective use of resources and assumptions underlying budget forecasts. Interpret budgets to management.

The March 28, 2013 support letter from [REDACTED] reiterates that that the proffered position is a financial analyst position and reiterate that duty description. It also states that the proffered position "requires at least a Bachelor's degree in Accounting or Finance or Business Administration with Finance or Accounting options." In his March 29, 2013 letter, counsel reiterated that same duty description and degree requirement.

On May 24, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted (1) an organizational chart of the petitioner's operations; (2) an evaluation of the proffered position, dated July 23, 2013, produced by Dr. [REDACTED], associate dean and professor of finance at [REDACTED] and (3) a letter, dated August 7, 2013, from [REDACTED]

The petitioner's organizational chart identifies the seven people the petitioner employs and their positions.

Dr. [REDACTED] July 23, 2013 evaluation of the proffered position discusses the duty description previously provided and states:

Based on the complex job duties listed above and the intense coursework needed to complete the major, it is obvious that the position of Financial Analyst would require

a candidate with a Bachelor's degree in Accounting, Finance, Business Administration or a related field.

Dr. [REDACTED] concluded:

It is my opinion that the position of Financial Analyst is clearly a specialty position, and requires the services of someone with advanced training through a Bachelor's program in Accounting, Finance, Business Administration or a related field.

In her August 7, 2013 letter, Angela Wu cited the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* and O*NET as support for the position that the proffered position requires a bachelor's or higher degree. Ms. [REDACTED] stated: "The [*Handbook*] and [O*NET] clearly and unambiguously say that a bachelor's degree is the entry-level education required for a financial analyst." The letter cites the sections of those sources that are pertinent to financial analyst positions and those that are pertinent to accountant positions.

The director denied the petition on October 2, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

With a motion filed on October 31, 2013, the petitioner submitted (1) a position evaluation, dated October 24, 2013, prepared by Dr. [REDACTED] Professor Emeritus at the [REDACTED] (2) a position evaluation, dated October 28, 2013, prepared by Dr. [REDACTED] Director of Assessment, [REDACTED]; and (3) a brief.

In his October 24, 2013 position evaluation, Dr. [REDACTED] stated:

[I]t is my expert opinion that the [proffered] position . . . would typically require as the industry standard a minimum baccalaureate education in a specific specialty, which would include a concentration in business administration, finance, accounting, or a closely related area of study (or the equivalent).

Dr. [REDACTED] October 28, 2013 position evaluation states:

It is my expert opinion that the [proffered] position . . . would typically require a minimum baccalaureate education in one of a number of specific and relevant specialties, which would include accounting, finance, economics, or business administration or a related discipline.

In the motion brief, the petitioner again asserted that the proffered position is a financial analyst position and that the evidence submitted demonstrates that the proffered position qualifies as a specialty occupation position.

On April 16, 2014, the service center reopened the matter and sent the petitioner an NOID. In that NOID, the service center noted that the petitioner is an online store with seven employees with a gross annual income of \$1.35 million. The service center asserted that the duties attributed to the proffered position indicate that it is a financial manager position, not a financial analyst position. The service center further observed that the *Handbook* does not indicate that financial manager positions, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

In response, the petitioner submitted: (1) an evaluation of the proffered position, dated May 7, 2014, prepared by Dr. [REDACTED] (2) an evaluation of the proffered position, dated May 13, 2014, prepared by Dr. [REDACTED] an associate professor at the [REDACTED] (3) an evaluation of the proffered position, dated May 13, 2014, prepared by Dr. [REDACTED] (4) a letter, dated May 15, 2014, from [REDACTED] and (5) a brief.

Dr. [REDACTED] May 7, 2014 evaluation identified the proffered position as a financial analyst position and reiterated his opinion that it requires a bachelor's degree in "business administration, finance, accounting or a closely related area of study or the equivalent."

Dr. [REDACTED] May 13, 2014 evaluation identifies the proffered position as a financial analyst position and states that the proffered position "typically requires a MINIMUM baccalaureate degree in Business Administration, Accounting, or a closely related discipline (or the equivalent)."

Dr. [REDACTED] May 13, 2014 evaluation identifies the proffered position as a financial analyst position and states that it "would typically require a minimum baccalaureate education in one of a number of specific and relevant specialties, which would include accounting, finance, economics, or business administration, or a related discipline."

In her May 15, 2014 letter, [REDACTED] identified the proffered position as a financial analyst position and observed that the petitioner is only obliged to show that the proffered position qualifies as a specialty occupation position pursuant to any one of the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). She asserted that the evidence, especially the position evaluations provided, is sufficient to demonstrate that the proffered position qualifies as a specialty occupation position pursuant to the salient regulations. She also cited the O*NET Summary Report for Financial Analysts as evidence that the proffered position qualifies as a specialty occupation position.

The brief provided in response to the NOID again identifies the proffered position as a financial analyst position and asserts that the evidence submitted demonstrates that the proffered position is a specialty occupation position citing, *inter alia*, the *Handbook* and O*NET.

The director denied the visa petition again on August 5, 2014 finding, again, that the proffered position does not qualify as a specialty occupation position pursuant to the relevant regulations in that it does not satisfy any of the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner submitted, *inter alia*, a brief that is substantially similar to the briefs submitted with the motion and in response to the NOID. In this brief, the petitioner contends, *inter alia*, that the proffered position is a financial analyst position and that the *Handbook* supports a finding that it is a specialty occupation.

IV. SPECIALTY OCCUPATION ANALYSIS

The LCA is certified for a position classified by O*NET at SOC 13-2011, which is a position for an accountant or auditor. The petitioner, however, has consistently asserted that the proffered position is a financial analyst position. In fact, as noted above, the petitioner contends in its August 7, 2013 letter and on appeal that the proffered position is a financial analyst position and that the *Handbook's* chapter on financial analysts supports a finding that the proffered position is a specialty occupation. We find that the duties as described by the petitioner are not sufficiently detailed to make clear whether the proffered position is a financial analyst, financial manager, or accountant position.¹ Nevertheless, for the sake of argument, we will assume that the proffered position is a financial analyst position as repeatedly claimed by the petitioner.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the chapter on financial analysts, the *Handbook* reports the following:

Financial analysts provide guidance to businesses and individuals making investment decisions. They assess the performance of stocks, bonds, and other types of investments.

Duties

¹ We do not take issue with the finding of the director, that the duties of the proffered position suggest that the position is a financial manager position, and that such a position would typically not qualify as a specialty occupation position. We analyze the position as a financial analyst position, as repeatedly asserted by the petitioner and the evaluators, in order to reach the petitioner's assertion that, if considered a financial analyst position, the proffered position would qualify as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

² All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Financial Analysts."

Financial analysts typically do the following:

- Recommend individual investments and collections of investments, which are known as portfolios
- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements to determine its value
- Meet with company officials to gain better insight into the company's prospects and management
- Prepare written reports
- Meet with investors to explain recommendations

Financial analysts evaluate investment opportunities. They work in banks, pension funds, mutual funds, securities firms, insurance companies, and other businesses. They are also called securities analysts and investment analysts.

Financial analysts can be divided into two categories: buy-side analysts and sell-side analysts.

- Buy-side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments, such as some universities.
- Sell-side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

Some analysts work for the business media and belong to neither the buy side nor the sell side.

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

Investing is becoming more global, and some financial analysts specialize in a particular country or region. Companies want those financial analysts to understand the language, culture, business environment, and political conditions in the country or region that they cover.

The following are examples of types of financial analysts:

Portfolio managers supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not

only are responsible for the overall portfolio, but also are expected to explain investment decisions and strategies in meetings with investors.

Fund managers work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions.

Ratings analysts evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.

Risk analysts evaluate the risk in investment decisions and determine how to manage unpredictability and limit potential losses. This job is carried out by making investment decisions such as selecting dissimilar stocks or having a combination of stocks, bonds, and mutual funds in a portfolio.

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

However, the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subsection of the *Handbook* entitled "How to Become a Financial Analyst" states the following:

Financial analysts typically must have a bachelor's degree, but a master's degree is often required for advanced positions.

Education

Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering. For advanced positions, employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

Licenses, Certifications, and Registrations

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial analyst positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job.

Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst (CFA) certification

from the CFA Institute, which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

Advancement

Financial analysts typically start by specializing in a specific investment field. As they gain experience, they can become portfolio managers, who supervise a team of analysts and select the mix of investments for the company's portfolio. They can also become fund managers, who manage large investment portfolios for individual investors. A master's degree in finance or business administration can improve an analyst's chances of advancing to one of these positions.

Important Qualities

Analytical skills. Financial analysts must process a range of information in finding profitable investments.

Communication skills. Financial analysts must explain their recommendations to clients in clear language that clients can easily understand.

Computer skills. Financial analysts must be adept at using software packages to analyze financial data, see trends, create portfolios, and make forecasts.

Decision making skills. Financial analysts must provide a recommendation to buy, hold, or sell a security. Fund managers must make split-second trading decisions.

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

According to the *Handbook*, most but not all financial analyst positions require a bachelor's degree. This does not support the view that any financial analyst job qualifies as a specialty occupation. "Most" does not indicate that a particular position within the spectrum of financial analyst jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), or that a particular financial analyst position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).³

³ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of financial analyst positions require at least a bachelor's degree, it could be said that "most" financial analyst positions require a bachelor's degree. It cannot be found, therefore, that a degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry

The *Handbook* also states that a "number of fields" such as accounting, economics, and engineering are "appropriate preparation." We note that this statement does not indicate that a baccalaureate (or higher degree) *in a specific specialty* is normally the minimum requirement for entry. To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Furthermore, the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. It is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to financial analyst position duties, or that a general engineering degree or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Thus, the *Handbook* does not support the claim that the occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, would normally have such a minimum, specialty degree requirement or its equivalent.

Where, 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 this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a 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.

To fill this void, the petitioner cites O*NET for the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. On February 27, 2015, 2015, we accessed the pertinent section of the O*NET Internet site, which addresses Financial Analysts under the SOC code 13-2051. Contrary to the petitioner's assertion, O*NET does not state a requirement for a bachelor's degree. Rather, it assigns financial analysts a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

We will now address the advisory opinion letters from Drs. [REDACTED], [REDACTED], and [REDACTED]. Dr. [REDACTED] stated that the proffered position requires a minimum of a bachelor's degree in business administration, finance, accounting, or a closely related area of study. Dr. [REDACTED] stated that the proffered position requires a minimum of a bachelor's degree in accounting, finance, business administration or a related field. Dr. [REDACTED] stated that the proffered position requires a minimum of a bachelor's degree in business administration, accounting, or a closely related discipline. Dr. [REDACTED] stated that the proffered position requires a minimum of a bachelor's degree in accounting, finance, economics, or business administration or a related discipline.

Initially, we observe that each of the position evaluations provided indicates that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position. 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). Thus, rather than supporting the petitioner's case, each of those evaluations suggests that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify as a specialty occupation position. Additional reasons exist that the evaluation letters provided are not persuasive evidence that the proffered position qualifies as a specialty occupation position.

Each of the evaluations contains a duty description that is essentially a reiteration of the duties described by the petitioner. There is no indication that any of the evaluators possess any knowledge of the petitioner's proffered position beyond this brief description. They do not discuss the duties of the proffered position in any substantive detail. Further, they do not demonstrate nor even assert in-depth knowledge of the petitioner's business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that any of the evaluators visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

The evaluators assert a general industry educational standard for financial analyst positions without referencing any supporting authority or any empirical basis for their pronouncements. Likewise, they do not provide substantive, analytical bases for their opinions and ultimate conclusions. They do not relate their conclusions to specific, concrete aspects of the petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that they attribute a degree requirement to such a generalized treatment of the proffered position undermines the credibility of their opinions.

In summary, for all of the reasons discussed above, we conclude that the opinion letters provided are not persuasive evidence in support of the proposition that the proffered position qualifies as a specialty occupation. The conclusions reached by the evaluators lack the requisite specificity and

detail and are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. There is an inadequate factual foundation established to support the opinions and we find that the opinions are not in accord with other information in the record. As such, neither the evaluators' findings nor their ultimate conclusions are worthy of any deference, and their opinion letters are not probative evidence towards satisfying any criterion of the regulation 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). As a reasonable exercise of our discretion we discount the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we 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 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 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms 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.

Thus, 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 to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

The evidence of record also 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position 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 a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, 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).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁴ The record contains no evidence pertinent to

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, 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

anyone that the petitioner has ever previously hired to fill the proffered position, and the petitioner has not, therefore, provided sufficient evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁵

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a 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. The duties of the proffered position, such as applying accounting and finance principles to analyze financial records and operations; conducting financial analyses; determining profitability; advising management on effective use of resources and the assumptions underlying forecasts, contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

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. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of financial analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

For the reasons discussed above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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 a 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

⁵ 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.

V. ADDITIONAL BASIS

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to demonstrate that the LCA provided with the visa petition corresponds to the petition.⁶

The petitioner claims that the proffered position is a financial analyst position, as described in the *Handbook* and O*NET, but the LCA was certified for "Accountants and Auditors," SOC (O*NET/OES) Code 13-2011. As was observed above, the evidence submitted is insufficient to establish the correct classification of the proffered position. However, if, as the petitioner steadfastly contends, the proffered position is a financial analyst position, then the LCA should have been certified for SOC Code 13-2051, "Financial Analysts," in order for it to be found to correspond to the petition.

To permit otherwise may result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), by allowing that petitioner to submit an LCA for a different occupation and at a lower prevailing wage than the one being petitioned for. The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). *See* 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). According to section 212(n)(1)(A) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees with similar experience and qualifications who are performing the same services. *See* 20 C.F.R. § 655.731(a); *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7th Cir. 2010); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, No. 07-97, 2009 WL 2371236, at *8 (Dept of Labor Admin. Rev. Bd. July 30, 2009).

In this matter, the LCA was certified for a Level I prevailing wage of \$46,592 per year for an accountant or auditor while the wage for a financial analyst position with a minimum, Level I prevailing wage at that time in the same metropolitan division was \$58,656 per year (or \$28.20 per hour). *See* <http://www.flcdatcenter.com/OesQuickResults.aspx?code=13-2011&year=13&source=1> (last visited Feb. 27, 2015) and <http://www.flcdatcenter.com/OesQuickResults.aspx?code=13-2051&year=13&source=1> (last visited Feb. 27, 2015). As such, the proposed annual wage of \$46,620 per year listed by the petitioner on the Form I-129 is \$12,036 below that required by law at that time for the proffered position of financial analyst. We further note that the Level I wage for a financial manager, which the proffered position may actually be, in the same metropolitan division at the time the LCA was certified, was \$77,605 per year which is \$30,985

⁶ We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

more than the proposed annual wage for the beneficiary. See <http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-3031&year=13&source=1> (last visited Feb. 27, 2015).

According to DOL guidance, if the petitioner believed its position was appropriately described in "Financial Analysts" or was a combination of "Financial Analysts" and "Accountants and Auditors," it should have chosen the relevant occupational code for the highest paying occupation, in this case "Financial Analysts." However, the petitioner chose the occupational category for the lower paying occupation "Accountants and Auditors" for the proffered position on the LCA.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

[Emphasis supplied.]

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to demonstrate that it has submitted a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

VI. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

(b)(6)

NON-PRECEDENT DECISION

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The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.