



U.S. Citizenship
and Immigration
Services

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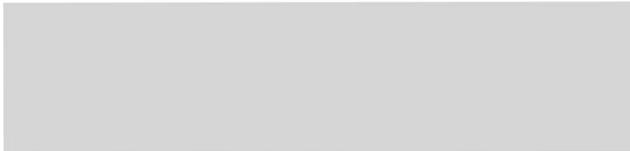
DATE: **MAY 04 2015**

PETITION RECEIPT #: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a "supplier of fashionable window accessories" established in [REDACTED]. In order to employ the beneficiary in what it identifies as a full-time position in the "Purchasing Agents, Except Wholesale, Retail, and Farm Products" occupational category, with "Procurement-Domestic/International" as its job title, the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner had not established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

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

I. FACTUAL AND PROCEDURAL BACKGROUND

In the petition signed on March 14, 2014, the petitioner indicates that it is seeking the beneficiary's services on a full-time basis at the rate of pay of \$54,000 per year. In the March 14, 2014 letter of support, the petitioner claims that the beneficiary will be responsible for the following duties, with percentage allotments:

- Percentage of Time Spent on Duty 60%
Description of Job Duties: [The beneficiary] will be responsible for the continuous and uninterrupted flow of raw materials imported from Asia to support manufacturing projected units and sales. He will also liaise with Asian vendors overseas; evaluate potential vendors in Asian markets as raw material suppliers; and optimize procurement based on current and forecasted volumes. The position requires the use of Asian languages such as Cantonese, Mandarin and Taiwanese in order to communicate with existing and potential vendors abroad
- Percentage of Time Spent on Duty 40%

Description of Job Duties: Furthermore, [the beneficiary] will prepare purchase orders with Asian vendors through computerized systems and placement of all procurement of raw materials. In addition to researching and evaluating findings, while working to improve quality standards and pricing to meet company objectives. He will also consolidate overseas shipments for economic efficiency.

The petitioner indicated that the position requires an individual whose professional credentials "include no less than a Bachelor's degree or equivalent in Management Information Systems."

With the initial petition, the petitioner submitted a copy of the beneficiary's Bachelor of Science degree and transcript from [redacted] indicating the beneficiary's major in Management Information Systems.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Purchasing Agents, Except Wholesale, Retail, and Farm Products" - SOC (ONET/OES Code) 13-1023, at a Level I (entry level) wage.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 16, 2014. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

In response to the RFE, the petitioner submitted a letter dated August 4, 2014 further detailing the duties of the position. As noted by the petitioner,

The position of Procurement-Domestic/International demands an individual who must negotiate terms and communicate daily with suppliers of these materials with the understanding of the needs of our industry. It is through this position that [the petitioner] remains competitive in the U.S. marketplace.

* * *

The primary responsibilities for this position are:

- Oversee and direct the continuous and uninterrupted flow of raw materials imported from Asia, which support our manufacturing projected sales unites in excess of \$7,000,000 gross revenues annually.
- Research and liaise with suppliers of proprietary products specific to the window treatment manufacturing industry, maintaining key alliance among raw material suppliers within our specific business model and manufacturing needs.
- Evaluate overseas supplies capabilities with regard to quality, technology,

- service, capacity, financial strengths and commitment to [the petitioner].
- Independently negotiate select Asian supplier pricing agreements, able to fully bind the company financially up to \$3,000,000 in annual raw materials procurement
 - Liaise with US-based engineers and Asian suppliers on specific product requirements, deadlines and restrictions.
 - Accurately forecast goods based on product budget restrictions.
 - Evaluate currency rate exchanges for Asian currencies on a daily basis.
 - Consolidate and manage overseas shipment for economic efficiency.
 - Additionally, the candidate will be required to prepare purchase orders with Asian vendors through computerized systems and placement of all procurement of raw materials.

Note, through this position, [the petitioner] will be able to eliminate two levels of middlemen in the industry. Thus, we are able to go directly to the source of suppliers of necessary raw materials described above.

Furthermore, because the candidate will be liaising with Asian vendors, it is imperative that he or she be fluent in reading, writing, and speaking the Mandarin, Cantonese and Taiwanese languages. Please note, the position of Procurement-Domestic/International involves specific responsibilities for the procurement, development and maintenance of Asian vendor/supplier relationships, an understanding of the raw materials, manufacturing projected units and sales is imperative for both the United States and our Asian suppliers. The ability to communicate, review and discuss various matters with our Asian suppliers and transportation agencies is essential to our operations in the United States. Further, the candidate must review whether the materials procured meet US standards. Additionally, the candidate will be required to communicate with vendors/suppliers and transportation agencies ion (sic) a daily basis via telephone, email and other written corresponds (sic) in the Mandarin, Cantonese and Taiwanese languages.

In addition to the petitioner's letter, the petitioner submitted, *inter alia*, a letter from [redacted] Ph.D. Associate Professor of Marketing, [redacted] a letter from [redacted] Assistant Professor of Finance, [redacted]; a letter from [redacted], Senior Vice President, [redacted] a copy of a job posting for a "Procurement Agent" from [redacted] selected print-outs from [redacted] website; job postings; the petitioner's marketing brochure; and an excerpt from the *Occupational Outlook Handbook* pertaining to "Purchasing Managers, Buyers, and Purchasing Agents.

The director reviewed the record of proceeding to determine whether the petitioner had established eligibility for the benefit sought. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that record of proceeding did not establish how the beneficiary's immediate duties would necessitate services requiring the

theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The director denied the petition on September 26, 2014.

The petitioner submitted an appeal of the denial of the H-1B petition. With the appeal, a brief was submitted by counsel. Counsel cites *Unico American Corp. v. Watson*, Case No. CV 89-6958 (C.D. Cal. Mar. 19, 1991) and asserts said decision directs USCIS to defer to an employer's view rather than relying on governmental classification systems. Counsel further cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 935 (6th Cir. 2012) and the court's statement that "a petitioner should be decided on the actual record, utilizing the correct portions of relevant resources." Counsel also cites to *Fred 26 Importers, Inc. v. DHS*, F. Supp 2d 1174, 1180-81 (C.D. Cal. 2006) for the proposition that "whether the position is professional is unrelated to the size of the company, salary or prior company history of maintaining the position." Finally, counsel references a recent decision from this office for the proposition that the evidence submitted must be evaluated, rather than making a determination on "pre-conceived impression[s] of what duties are typically performed."

II. PREPONDERANCE OF THE EVIDENCE STANDARD

In the appeal brief, counsel references the preponderance of the evidence standard. With respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

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

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

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

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has

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

Thus, in accordance with the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; see e.g., *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). As will be discussed, in the instant case, that burden has not been met.

III. FINDINGS MADE BEYOND THE DIRECTOR'S DECISION

We reviewed the record of proceeding in its entirety and, as will be discussed later in the decision, agree with the director that the petitioner has not established eligibility for the benefit sought. Moreover, we have identified an additional issue that precludes the approval of the H-1B petition that was not identified by the director. Consequently, even if the petitioner overcame the ground for the director's denial of the petition (which it has not), it could not be found eligible for the benefit sought.¹

The wage level designated by the petitioner on the LCA for the proffered position is questionable. More specifically, the record of proceeding contains discrepancies between what the petitioner claims about the level of responsibility and requirements inherent in the proffered position set against the contrary level of responsibility and requirements conveyed by the wage level selected by the petitioner on the LCA. As noted above, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Purchasing Agents, Except Wholesale, Retail, and Farm Products" at a Level I (entry) wage.

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

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

preparation (education, training and experience) generally required for acceptable performance in that occupation.²

It is important to note that prevailing wage determinations start with an entry level wage (Level I) 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.³ 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 as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL 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

² For additional information on wage levels, 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.

³ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

In the instant case, counsel claims that the beneficiary will "independently negotiate select Asian supplier pricing agreements." Counsel further claims that the beneficiary will be able to "fully bind the company financially up to \$3,000,000 in annual raw materials procurement." Counsel further asserts that the occupational category of Purchasing Managers, Buyers, and Purchasing Agents is broad and includes all levels of positions but that "this position is more narrowly drawn and far more complex than the general position encompassed by the OOH."

The petitioner indicates in its letter dated August 4, 2014 that it will rely on the beneficiary to negotiate terms and communicate daily with suppliers and that if communication to the suppliers is lost, the petitioner's [REDACTED] collection, which "brings in \$3.5 million a year," and "our [REDACTED] collection, which brings in approximately \$3 million a year, would have to be discontinued, resulting in the loss of hundreds of jobs and customers who rely on the quality" the petitioner can provide. The petitioner further notes that the beneficiary will "oversee and direct the continuous and uninterrupted flow of raw materials," "research and liaise with suppliers," "evaluate overseas supplier capabilities," "independently negotiate select Asian supplier pricing agreements," will be able to "fully bind the company financially up to \$3,000,000 in annual raw materials procurement," "evaluate currency rate exchanges," and "consolidate and manage overseas shipment." The petitioner concludes that since the beneficiary will be liaising with Asian vendors, it will be imperative that he be "fluent in reading, writing and speaking the Mandarin, Cantonese and Taiwanese languages."⁴

Such reliance on the beneficiary's work appears to surpass the expectations of a Level I purchasing agent position, as described above, which entails the employee working under close supervision, performing routine tasks that require only a basic understanding of the occupation and limited exercise of judgment. As noted above, a Level I designation is appropriate for research fellows, workers in training, and interns. In the instant case, rather than the beneficiary's work being "monitored and reviewed for accuracy," it appears that the petitioner claims that it will be relying on the accuracy of the beneficiary's work with regard to the growth of its operations and important business decisions for the company.

Furthermore, as detailed above, the petitioner emphasizes the importance of foreign language skills for the proffered position. In accordance with the guidance provided by DOL, a language requirement other than English in a petitioner's job offer generally is considered a special skill for all occupations, with the exception of "Foreign Language Teachers and Instructors," "Interpreters," and "Caption Writers." *Id.* In the instant case, the petitioner designated the proffered position under the occupational category "Purchasing Agents, Except Wholesale, Retail, and Farm Products" at a Level I (the lowest of four assignable wage levels). Therefore, it has not established that the foreign language requirement was reflected in the wage-level for the proffered position.

⁴ The petitioner also submitted evidence that it employed the beneficiary in H-1B status for six years, which further undermines any assertion that this is an entry-level position.

Thus, upon review of the assertions regarding the proffered position, we must question the stated requirements for the proffered position, as well as the level of complexity, independent judgment and understanding that are actually needed for the proffered position as the petitioner designated this position as a Level I entry-level job on the LCA certified by DOL. The assertions that the duties require a significant level of responsibility and expertise, and that the duties require foreign language skills, do not appear to be reflected in the wage level chosen by the petitioner on the LCA for the proffered position.

This aspect of the LCA undermines the credibility of the petition and, in particular, the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA supports the H-1B petition filed on behalf of the beneficiary. Here, provided the proffered position was found to be a higher-level position that exceeded industry or normal standards as asserted elsewhere in the petition, the petitioner would have failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position; that is, specifically, the LCA submitted in support of the petition would then not correspond to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such aspects in accordance section 212(n)(1)(A) of the Act and the pertinent LCA regulations.

The statements regarding the requirements and claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. We find that, fully considered in the context of the entire record of proceeding, the petitioner has not established the nature of the proffered position and in what capacity the beneficiary will actually be employed. As a result, even if it were determined that the proffered position were a higher-level and more complex position as described and claimed elsewhere in the petition in support of the petitioner's assertions that this position qualifies as a specialty occupation, the petition could still not be approved for this additional reason.⁵

⁵ The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The regulations at 8 C.F.R. § 214.2(h)(2)(i)(E) instead require that the petitioner "file an amended or new

IV. REVIEW OF THE DIRECTOR'S DECISION

Specialty Occupation

We will now address the director's basis for denial of the petition, namely her finding that the petitioner did not establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence does not establish that the position as described constitutes a specialty occupation. For efficiency's sake, we hereby incorporate the above discussion and analysis into the record of proceeding regarding the beneficiary's proposed employment.

A. Law

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty⁶ (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.

petition, with fee, with the service center where the original petition was filed to reflect any material changes in the terms and conditions of employment"

⁶ Counsel contends on appeal that the director's use of "specific specialty" as a requirement was "erroneous." As this language appears in the text of the H-1B statute, we do not find counsel's assertion persuasive.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

B. Preliminary Findings

i. Regarding the Proffered Position's Duties and the Relative Complexity of the Position

As a preliminary matter, we do not find that the record establishes relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise. While the petitioner may claim that the nature of the proposed duties and the position that they are said to comprise elevate them above the range of usual Purchasing Agents, Except Wholesale, Retail, and Farm Products positions and duties by virtue of their level of specialization, complexity, and/or uniqueness, the evidence of record does not support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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

Oversee and direct the continuous and uninterrupted flow of raw materials imported from Asia

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of raw materials that the beneficiary must oversee and direct. Likewise, the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the above-referenced duties. Overall, we find that the description of the duties of the proffered position does not

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

In addition, as discussed in detail above, the petitioner's submission of an LCA certified for only a Level I, entry-level wage signifies the petitioner's endorsement of the appropriateness of a characterization of the proffered position as a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on prevailing-wage levels, this wage rate indicates the petitioner's assertion that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

The abstract level of information provided regarding the duties of the proffered position and the wage level on the LCA does not provide sufficient information regarding the petitioner's position to determine that the position proffered here is a specialty occupation position. The petitioner has not provided sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. The record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty (or its equivalent). Consequently, this precludes a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

ii. Regarding Professor [REDACTED] and Professor [REDACTED] Letters'

In support of the H-1B petition, the petitioner submitted a letter from [REDACTED], Ph.D. The letter is dated August 5, 2014. In her letter, Professor [REDACTED] (1) describes the credentials that she asserts qualify her to opine upon the nature of the proffered position; (2) lists the duties

proposed for the beneficiary; (3) states her belief that the performance of the duties she lists requires at least a bachelor's degree; and (4) claims that these qualifications represent a common standard for parallel positions among similar organizations.

In addition, the petitioner submitted a letter from [REDACTED]. The letter is dated August 5, 2014. Professor [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties proposed for the beneficiary; (3) states his belief that the performance of the duties he lists requires at least a bachelor's degree in Business Administration or a related field; and (4) claims that these qualifications represent a common standard for parallel positions among similar organizations.

As a preliminary matter, we note that Professor [REDACTED] first states in her letter that the position of Procurement-Domestic/International requires that the candidate possess "at least a Bachelor's Degree in Business Administration, or a related business disciplines." However, in conclusion, Professor [REDACTED] states that the position is associated with the attainment "of a minimum of a bachelor's degree in Marketing, or a related field." She did not explain this inconsistency. 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).

Further, we note that the opinion letters do not cite specific instances in which Professor [REDACTED] or Professor [REDACTED] past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that either individual has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that either individual is an authority on those specific requirements.

Based upon a complete review of the record, we observe that neither individual has provided sufficient information regarding the basis of their claimed expertise on this particular issue. The documentation does not establish their expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how Professor [REDACTED] and Professor [REDACTED] education, training, skills or experience would translate to expertise or specialized knowledge regarding the current recruiting and hiring practices of an enterprise engaged in the supply of "fashionable window accessories" (as designated by the petitioner in the Form I-129) or similar organizations for purchasing agents, except wholesale, retail, and farm products (or parallel positions).

With regard to the opinion letters themselves, neither references nor discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which they may have consulted in the course of whatever evaluative process they may have followed. Neither Professor [REDACTED] nor Professor [REDACTED] demonstrates or asserts in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's particular business enterprise. For instance, there no

evidence that either has any in-depth knowledge of the petitioner's business operations gained through such means as visiting the petitioner's premises, observing the petitioner's employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job.

Neither Professor [REDACTED] nor Professor [REDACTED] discusses the duties of the proffered position in any substantive detail. To the contrary, they simply list the tasks in bullet-point fashion with little discussion. As a result, it is not evident that they analyzed the duties prior to formulating their letters.

Importantly, there is also no indication that the petitioner advised either Professor [REDACTED] or Professor [REDACTED] that it characterized the proffered position as a low, entry-level procurement manager position (under the occupational classification of "Purchasing Agents, Except Wholesale, Retail and Farm Products"), for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. It appears that Professor [REDACTED] and Professor [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that either individual possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon the job duties and responsibilities. We consider this a material omission.

Professor [REDACTED] and Professor [REDACTED] do not provide a substantive, analytical basis for their opinions and ultimate conclusions. Their opinions do not relate their conclusions to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Moreover, neither writer supported their conclusions by providing copies or citations of any research material used. Professor [REDACTED] and Professor [REDACTED] have not provided sufficient facts that would support the assertion that the proffered position requires at least a bachelor's degree in a specific specialty (or its equivalent).

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letters rendered by Professor [REDACTED] and Professor [REDACTED] are not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. Further, the opinions are not in accord with other information in the record.

As such, neither Professor [REDACTED] or Professor [REDACTED] findings nor their ultimate conclusions are worthy of deference, and the 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 opinion letters from Professor [REDACTED] and Professor [REDACTED] as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). It should be noted that, for efficiency's sake, the above discussion and analysis regarding the two letters are hereby incorporated as part of this decision's later analyses of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

iii. Regarding the Letter from [REDACTED] Senior Vice President, [REDACTED]

In support of the assertion that the proffered position satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner also submitted an August 7, 2014 letter from [REDACTED] Senior Vice President, [REDACTED] Mr. [REDACTED] states the following in pertinent part:

I hold the position of Senior Vice President with [REDACTED] a Connecticut based company, and our primary business is the design and development of window covering components. I write this letter to detail the role of the position of Procurement-Domestic/International within our company and in the Window Coverings Industry in general. [REDACTED] has been in the Window coverings industry for more than 30 years, and we only hire Procurement professionals who have at least a Bachelor's degree.

Over the past several years, we have worked closely with [the petitioner], who is a valued customer. We also share a business model similar to that of [the petitioner], and other companies in the supply of custom window coverings. Our companies share much of the same structure and our business transactions are quite similar. Therefore, utilizing properly trained procurement professionals would be critical to their operations as well.

As will now be discussed, we find that the letter does not constitute probative evidence of the proffered position satisfying any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. *Black's Law Dictionary* 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); *see also id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (BIA) has

held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

First, the letter from Mr. [REDACTED] did not discuss the duties of the proffered position in any substantive detail. Mr. [REDACTED] effectively reiterates some, but not all, of the duties provided by the petitioner, duties which have already been determined to be relatively abstract and generalized. As we noted above, the duties lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations.

Next the letter is not accompanied by, and it does not expressly state the full content of, whatever documentation and/or oral transmissions upon which it may have been based. For instance, Mr. [REDACTED] does not indicate how often he communicated with the petitioner in their course of business as to what the performance of the general list of duties cited by them would actually require, or whether they visited the petitioner's business premises. Nor does Mr. [REDACTED] articulate whatever familiarity he may have obtained regarding the particular content of the work products that the petitioner would require of the beneficiary.

Furthermore, Mr. [REDACTED] description of the position upon which he opines does not indicate that he considered, or was even aware of, the fact that the petitioner submitted an LCA that was certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation which, as discussed above, signifies that the beneficiary is only expected to possess a basic understanding of the occupation. In any event, Mr. [REDACTED] nowhere discusses this aspect of the proffered position. We consider this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for the ultimate conclusions provided as to the educational requirements of the position upon which they opine.

For all of these reasons, we find that the letter provided is not probative evidence towards satisfying any criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). For the sake of economy, we hereby incorporate the above discussion and findings into its analysis of each of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Based upon a complete review of the record of proceeding, we reiterate that the petitioner has not established (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty. Consequently, this precludes a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

Irrespective of the above findings, we will continue to discuss the evidence of record to identify other evidentiary deficiencies that preclude us from reasonably determining that the petition has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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

We recognize DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷ As previously discussed, the petitioner filed the LCA to indicate that the proffered position corresponds to "Purchasing Agents, Except Wholesale, Retails and Farm Products" – SOC (ONET/OES) Code 13-1023. The *Handbook* addresses these occupational categories in the chapter entitled "Purchasing Managers, Buyers, and Purchasing Agents." Importantly, in the initial submission, the petitioner indicated with the LCA that the duties, responsibilities, and requirements of the proffered position are most similar to those of a purchasing agent.

The subchapter of the *Handbook* entitled "How to Become a Purchasing Manager, Buyer, or Purchasing Agent" states the following about this occupational category:

Education

Educational requirements usually vary with the size of the organization. A high school diploma is enough at many organizations for entry into the purchasing agent occupation, although large stores and distributors may prefer applicants who have completed a bachelor's degree program and have taken some business or accounting classes. Many manufacturing firms put an even greater emphasis on formal training, preferring applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences.

Purchasing managers usually have at least a bachelor's degree and some work experience in the field. A master's degree may be required for advancement to some top-level purchasing manager jobs.

Training

⁷ 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 the excerpt of the *Handbook* regarding the duties and requirements of the occupational category "Purchasing Managers, Buyers, and Purchasing Agents" into the record of proceeding.

Buyers and purchasing agents typically get on-the-job training for more than 1 year. During this time, they learn how to perform their basic duties, including monitoring inventory levels and negotiating with suppliers.

Licenses, Certifications, and Registrations

There are several recognized credentials for purchasing agents and purchasing managers. These certifications involve oral or written exams and have education and work experience requirements.

The Certified Professional in Supply Management (CPSM) credential, offered by the Institute for Supply Management, covers a wide scope of duties that purchasing professionals do. The exam requires applicants to either have a bachelor's degree and 3 years of supply management experience, or for those without a bachelor's degree, 5 years of supply management experience and the successful completion of three CPSM exams.

The American Purchasing Society offers two certifications: the Certified Purchasing Professional (CPP) and Certified Professional Purchasing Manager (CPPM). Candidates become eligible for these certifications through a combination of purchasing-related experience, education, and professional contributions (such as published articles or delivered speeches).

APICS offers the Certified Supply Chain Professional (CSCP) credential.

The Universal Public Procurement Certification Council offers two certifications for workers in federal, state, and local government: Certified Professional Public Buyer (CPPB) and Certified Public Purchasing Officer (CPPO). NIGP: The Institute for Public Procurement offers preparation courses for these certification exams.

Work Experience in a Related Occupation

Purchasing managers typically must have at least 5 years of experience as a buyer or purchasing agent. At the top levels, purchasing manager duties may overlap with other management functions, such as production, planning, logistics, and marketing.

Advancement

An experienced purchasing agent or buyer may become an assistant purchasing manager before advancing to purchasing manager, supply manager, or director of materials management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Purchasing Managers, Buyers and Purchasing Agents, on the Internet at

<http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-4> (last visited April 28, 2015).

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into purchasing agent positions. The narrative of the *Handbook* indicates that the educational requirements usually vary with the size of the organization. It continues by stating that at many organizations, a high school diploma is sufficient for entry into purchasing agent positions.⁸

The *Handbook* states that large stores and distributors may prefer applicants who have completed a bachelor's degree program and have taken some business or accounting classes. The text suggests that a baccalaureate degree may be a *preference* among employers of purchasing agents in some environments, but that many employers hire candidates with less than a bachelor's degree, including candidates possessing a high school diploma. A preference for a candidate with a degree is not an indication of a requirement for the same.

The *Handbook* reports that there are several recognized certification credentials for purchasing agents and purchasing managers. It also provides basic information, including the general requirements for these credentials. There is no indication, however, that the petitioner requires the beneficiary to have obtained any certification credential or other professional designation to serve in the proffered position.

The record does not establish that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that normally the minimum requirement for entry into the particular position proffered here is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner also do not indicate that this particular position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the

⁸ When reviewing the *Handbook*, we must again note that the petitioner designated the proffered position on the LCA under the occupational category "Purchasing Agents, Except Wholesale, Retail, and Farm Products." We reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). This designation is indicative of a comparatively low, entry-level position relative to other purchasing agents. DOL guidance indicates that a Level I designation is appropriate for a position as a research fellow, a worker in training, or an internship. Again, the *Handbook* indicates that for many entry-level positions, "[a] high school diploma is enough. . ."

petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion.

We here refer the petitioner back to our earlier comments and findings with regard to the letters submitted by Professor [REDACTED], Professor [REDACTED] and Mr. [REDACTED]. As noted above, we find that said letters are not probative evidence that the proffered position is a specialty occupation.

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

Next, 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 sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Further, we incorporate here our previous findings regarding the letters submitted by Professor [REDACTED], Professor [REDACTED] and Mr. [REDACTED].

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

First, we note that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions among similar organizations* (emphasis added)." We note that the job advertisement for [REDACTED] is for "Construction-Residential & Commercial/Office." The [REDACTED] job advertisement is for "Automotive and Parts Mfg." The [REDACTED] job advertisement is for "Energy and Utilities." For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such

evidence, documentation regarding other organizations is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that the organizations are (1) similar to it and (2) operate in the same industry without providing a legitimate basis for such an assertion. 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)).

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

The extensive experience that some of the job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position.⁹ So, the job-vacancy advertisements do not establish that the advertised positions are "parallel" to the proffered position.

In addition, two of the submitted advertisements do not specify a requirement for a bachelor's or higher degree in a specific specialty or its equivalent. The [REDACTED] advertisement for a "Purchasing Agent" only states "Bachelor's degree in a related field" without any specification of any particular academic major. Likewise, the [REDACTED] advertisement for a "Purchasing Agent-Level III" specifies a "Bachelor's degree" with no indication that the bachelor's degree must be in any particular area or equivalent to a bachelor's or higher degree in a specific specialty.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.

⁹ By way of example, the [REDACTED] advertisement for a "Purchasing Agent" states "Years of Experience: 2+ to 5 Years." The [REDACTED] advertisement for a "Purchasing Agent-Level III" states "Years of Experience: 2+ to 5 years." The [REDACTED] advertisement for "Purchasing Agent-Plastics" states "3 to 5 years of purchasing experience." The extensive experience that these job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position.

Next, we find that the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

The statements in the record with regard to the claimed complex and unique nature of the proffered position are acknowledged. However, as reflected in our earlier comments and findings regarding the record's description of the duties comprising the proffered position, the petitioner has not provided sufficient evidence to establish why it is more likely than not that the proffered position can only be performed by a person with at least a bachelor's degree *in a specific specialty* or its equivalent. We here refer the petitioner back to our comments and findings with regard to the generalized and relatively abstract terms in which the proposed duties and the position that they are said to comprise were presented. They simply do not establish a level of complexity or specialization that would elevate the proffered position above positions in the Purchasing Agents occupational group that the *Handbook's* information indicates can be performed by persons without a bachelor's or higher degree, or the equivalent, in a specific specialty.

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

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

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

Our review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question. To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that the imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.¹⁰

¹⁰ Any such assertion would be undermined in this particular case by the fact that the petitioner submitted

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

The director's RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. Thus, the director provided the petitioner with an additional opportunity to establish a history of recruiting and hiring for the proffered position only individuals with a bachelor's or higher degree in a specific specialty, or the equivalent. This criterion was not addressed. As the evidence of record does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

The petitioner asserts 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. We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as an entry-level position relative to others within the occupational category of "Purchasing Agents, Except Wholesale, Retail, and Farm Products." The petitioner designated the position as a Level I position (the lowest of four assignable wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it has not been established that the petitioner's proffered position is one with specialized and complex duties compared to others within the occupation as such a position would likely be classified at a higher-level, such as a Level III (experienced) or IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

an LCA that had been certified for a Level I wage-level, which is appropriate for use with a comparatively low, entry-level position relative to others within the same occupation.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established 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. We therefore conclude that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

We note that counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.¹¹ We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA

¹¹ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Counsel also cites the unpublished court decision in *Unico American Corp. v. Watson* ___, F. Supp. ___, 1991 WL 11002594 (C.D. Cal. 1991), to state that we should give deference to the employer's view, should consider fully the employer's evidence and should not rely simply on standardized government classification systems (e.g., the *Handbook*). Counsel, however, has furnished no evidence to establish that the facts of the instant petition are analogous to those in this unpublished decision. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In any event, we are not running counter to the proposition for which counsel cites this decision, for we base our decision upon the totality of the evidence in the record of proceeding bearing upon the specialty-occupation issue, and without sole or excessive reliance upon the relevant information contained in the *Handbook*. Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. at 715. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on us outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

Finally, with respect to counsel's reference to *Fred 26 Importers v. DHS*, 445 F. Supp. 2d 1174 (C.D. Cal. 2006), we note that in that case the court found that USCIS had failed to provide a rational basis for its finding that the petitioner had failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Such is clearly not the case here, as the director specifically discussed that criterion at page 8 of the decision, and discussed matters relevant to the analysis of that criterion throughout the decision. We have done the same on appeal. Even if that were not the case, we would be under no obligation to follow the holding in *Fred 26 Importers*: again, in contrast to the broad precedential authority of the case law of a United States circuit court, we reiterate here that we are not bound to follow the published decision of a United States district court in matters arising even within the same district, as detailed above. *See Matter of K-S-*, 20 I&N Dec. at 715. Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before this office, the analysis does not have to be followed as a matter of law. *Id.* at 719.

For the reasons related in the preceding discussion, the petitioner has not demonstrated 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.

V. CONCLUSION AND ORDER

An application or petition that does not 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 the AAO conducts 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 1037, *aff'd*, 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

Burden of Proof Blurb (multiple grounds)

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.¹² 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.

¹² As these matters preclude approval of the petition, we will not address any of the additional issues we have identified on appeal.