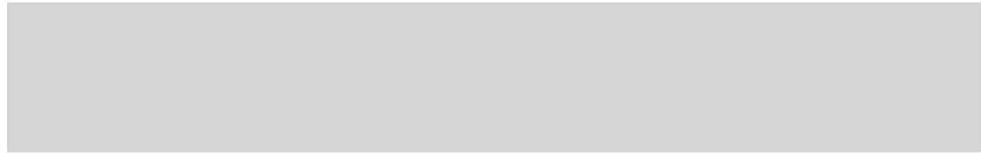




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 13 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Dan Rosenberg  
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a 4000-employee aviation-training business established in [REDACTED]. In order to employ the beneficiary in what it identifies as a position in the Airline Pilots, Copilots and Flight Engineers occupational category, with "Ground/Simulator Instructor " as its job title,<sup>1</sup> the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

I. EVIDENTIARY STANDARD ON APPEAL

As a preliminary matter, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within its purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

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

\* \* \*

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

\* \* \*

<sup>1</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O\*NET/OES) Code 53-2011, the associated Occupational Classification of "Airline Pilots, Copilots and Flight Engineers," and a Level I prevailing wage rate.

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

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

*Id.*

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved.

Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence submitted in support of this petition, we find that the record does not contain sufficient relevant, probative, and credible evidence to lead us to believe that it is "more likely than not" or "probably" true that the proffered position qualifies as a specialty occupation.

## II. PROCEDURAL HISTORY

In the Form I-129, Petition for Nonimmigrant Worker, the petitioner asserted that it is seeking the beneficiary's services as a Ground/Simulator Instructor on a full-time basis at a rate of pay of \$49,800 per year. In her March 26, 2014 letter, the petitioner's center manager described the petitioner as follows:

[The petitioner], a U.S. company established in [redacted] and wholly-owned by [redacted], is the world's larger provider of aviation services, providing more than a million hours of training each year to 75,000 pilots, technicians, and other aviation professionals in general, commercial, and military aviation under rigorous supervision and certification by the Federal Aviation Administration.

\* \* \*

[The petitioner's] training incorporates computer-driven state-of-the-art simulators that replicate the experience of flying an airplane with certified accuracy. [The petitioner's] fleet of over 300 advanced flight simulators and training devices, a division of courseware developers, and its staff of 1,800 professional instructors not only train pilots, but transmit their experience and knowledge to technicians, flight attendants, corporate schedulers/dispatchers, and other aviation professionals through its network of 40 Learning Centers in the U.S., Canada, France, the United Kingdom, Japan and South Africa.

The petitioner's' Center Manager described the proposed duties as follows:

We wish to employ [the beneficiary] in the position of Ground/Simulator Instructor in [redacted] Kansas. He will also have additional responsibilities as a Subject Matter Expert developing training materials. The Ground/Simulator Instructor is responsible for ground-based Simulator training of Customer Pilots for Recurrent, Initial or generic training courses and for measuring the training progress of customers, objectively and subjectively, within the established training curriculum. This position reports to the Program Manager. Essential duties and responsibilities for the instructor role include the following:

**Training Standards-Program Activities:** (Includes Compliance with regulations and guidelines, and Quality Management System (QMS) policies and procedures; plus Lesson Planning, Current Material and Set-up)

- Maintain Instructor qualification in accordance with [the petitioner's] policies and procedures and [the petitioner's] Quality Maintenance Systems (QMS) processes and procedures.
- Keep current all certificates, ratings and designations required to perform duties as a Simulator Instructor.
- Deliver training to [the petitioner's] international clients in accordance with [the petitioner's] *Instructor Performance Standards*.

**Training Standards-Instructor Activities:** (Includes Compliance with regulations and guidelines and QMS policies and procedures)

- Maintain all training material (various media forms) in a current state at all times.
- Provide pre-briefings and post-briefings before and after each Simulator lesson in accordance with [the petitioner's] *Instructor Performance Standards*.

- Prepare the Flight Simulator and/or briefing room no later than 15 minutes prior to the scheduled start of the Simulator lesson and/or pre-briefing session.
- Integrate Crew Resource Management (CRM)/Human Factors with technical (procedural) training.
- Utilize Customer's Standard Operating Procedures (SOPs), Checklists, and Minimum Equipment List (MEL) during training, when requested or required.
- Assist in keeping all publications used in Simulator training current.
- Ensure classrooms, flight training devices (FTDs) and scheduled simulators are ready for client training events.
- Attend scheduled Instructor Meetings.
- **NOTE:** Act as *Second-in-Command* for clients training in multi-crew aircraft who have come to training without a flying partner. In that capacity, will serve as competent Second-in-Command and will not be performing instructional duties.

**Documentary/Reports Activities:**

- Interact with Simulator Mx technicians concerning all Simulator functions and malfunctions as well as ensure all malfunctions are documented properly using appropriate forms.
- Perform administrative duties relative to training such as preparing for the delivery of training, record keeping, monitoring Customer progress, training development and maintenance of training programs.
- Report to the Director of Training (DOT) any Customer training programs or conflicts (poor performance, Customer/Instructor conflicts, excessive tardiness, etc.)

**Daily Responsibilities**

- Maintain [the petitioner's] commitment to Customer satisfaction while performing job duties.
- Interact within a cooperative environment through beneficial behavior, commitment to common goals, contribution to problem solving, communication of ideas and suggestions, and encouragement to other employees and departments.
- Accountable for the security of [the petitioner's] materials, projects and business information regarding the methods and techniques used in the production and usage of [the petitioner's] products.

- Accountable for the accuracy and completeness of assigned tasks.
- Adhere to a required work schedule including prompt and regular attendance.
- Report, on a timely basis, any safety hazards observed in work area, equipment, and/or building to appropriate person(s) for correction.
- Participate in the Quality Management System (QMS) activities at assigned site and adhere to the processes related to accomplishing the site's QMS goals.

The beneficiary will have extra responsibilities, compared to most instructors, as he teaches two different types of aircraft. Typically our instructors are hired to train in one aircraft program, specializing in a specific type of aircraft. While many will transition in their careers over time to a different aircraft, it is rare for an instructor to work in two programs concurrently and go back and forth between models as he will do. [The beneficiary] will teach pilots in our [redacted] aircraft program, and we anticipate moving him into other programs during the H-1B petition period. He currently works in the [redacted] program flying as a co-pilot.

**Subject Matter Expert.** Moreover, we will rely on [the beneficiary] to assist in developing the lessons and visual aids used by other [petitioner's] instructors in classroom presentations and working on checklist improvements for aircraft operations. In this role he has to be able to comprehend complex aircraft information; including keeping up with the latest developments in aircraft avionics and systems upgrades, and then be able to communicate that information in a way that other pilots can learn from. This is a highly specialized function, and we are very selective in whom we ask to perform this function. We refer to these instructors as Subject Matter Experts, as they are ultimately training our transfers on the material that will be passed on to our clients/students.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 8, 2014. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary.

On July 29, 2014, counsel for the petitioner responded to the RFE. Counsel submitted job listings, an expert opinion letter, resumes for 7 flight instructors with Subject Matter Expert (SME) duties for the petitioner, and web print-outs pertaining to the petitioning company. Finally, counsel submitted a letter from the petitioner's assistant center manager further detailing the proffered position. As stated by the petitioner,

Subject Matter Experts are pilot instructors who create and develop course materials and teach our other instructors, in addition to teaching courses for our customer

pilots. Only a small percentage of our pilot instructors serve as Subject Matter Experts. We are providing more details about the Subject Matter Expert (SME) component of the position, supplementing the standard pilot instructor job description and summary of the SME function that we submitted previously, as follows.

**BASIC FUNCTION:** Support technical development through the design and review of aircraft training programs at an expert level. Superior level of experience, knowledge and education required to create and improve training programs and train existing instructor group (in collaboration with the Senior Mentor instructor). Teach, coach, and mentor current and qualified instructors/evaluators/examiners to continuously improve their skills, knowledge, abilities, and training techniques in the delivery of ground, simulator and flight training courses for complex, typically larger than (sic) 12,500lb aircraft powered by piston, turbo prop or turbojet power plants. Responsibilities may include some or all of the responsibilities as described below depending on the needs of the Learning Center:

- Create training methodologies for aircraft programs based on technical expertise, adult learning principles and classroom/simulator training experience.
- Provide technical guidance based on OEM publications, engineering documents and other technical publications and translate information into learning principles for instructors, clients and the general pilot population,
- Provide feedback and direction on a future training material. Create courseware maps to determine the instructional strategy for each aircraft program.
- Transfer knowledge and second-hand experience to less experienced teammates.
- Ensure that the interaction, including business recommendations, between Lead Instructor/SME, Senior Mentor Instructor and instructors/teammates includes the feedback given by management, instructors, teammates, customers and clients.
- Provide fair, positive praise/encouragement as well as constructive criticism as required.

- Establish a developmental partnership by sharing knowledge, skills, information, and perspective to foster professional growth among teammates and the aviation industry.
- Create benchmarks for evaluating the progress of coarseware development.

The director reviewed the information provided by the petitioner and counsel to determine whether the petitioner had established eligibility for the benefit sought. On August 8, 2014, the director denied the petition. On appeal, counsel submits a brief and supporting documentation.

### III. SPECIALTY OCCUPATION ISSUE

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

#### A. Law

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

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

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

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

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

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

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

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

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

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

## B. Preliminary 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 Airline Pilots, Copilots and Flight Engineers 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 explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. Take for example the following duty description:

Developing the lessons and visual aids used by other [petitioning company's] instructors in classroom presentations and working on checklist improvements.

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of the lessons and visual aids that the beneficiary must develop. Nor does the record contain substantive explanation or documentation showing the volume and range of checklist improvements the beneficiary would have to work on. 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 Airline Pilots, Copilots and Flight Engineers positions that do not require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent.

ii. Regarding the Evaluations of the Position's Educational Requirements

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted two letters for consideration as expert opinions.

Included among the documents submitted on appeal is a September 3, 2014 document entitled "Specialty Occupation Evaluation" which was authored by [REDACTED] Ph.D., Associate Professor, Aviation Department, Assistant Dean, College of Graduate and Professional Studies, [REDACTED] Dr. [REDACTED] outlined duties of the proffered position, as previously provided by the petitioner to USCIS, described the position as that of a Ground/Simulator Instructor, and made the following assertions: ng :

A company, such as [the petitioning company], that is seeking to employ a Ground/Simulator Instructor requires prospective candidates to have a strong foundation in the field of Aviation or a closely related field which can only be obtained through a Bachelor's degree in the field of Aviation or a closely related field. The skills, knowledge, and analytic thinking acquired through the acquisition of a Bachelor's degree or its equivalent are considered necessary by people in the industry seeking to hire a Ground/Simulator Instructor, and thus the degree is considered an industry standard requirement for the position.

We note that Professor [REDACTED] cites no objective evidence to support his finding that acquisition of a bachelor's degree in Aviation or a closely related field is considered an "industry standard requirement for the position." Likewise, Professor [REDACTED] does not elucidate whatever substantive aspects of the proposed duties led him to pronounce that the proffered position requires attainment of at least a bachelor's degree in Aviation or a related field. Also, Professor [REDACTED] provides no empirical support for his conclusion that "completion of a Bachelor's degree in Aviation or a closely related field is the only relevant training for the specific position of Ground/Simulator Instructor."

Further, we observe that Dr. [REDACTED] 10-page resume indicates that he holds a Bachelor of Science in *Aviation Administration*, a Master's of Aeronautical Science in *Aviation Safety*; and a Doctor of Philosophy in *Curriculum and Instruction*. Upon reading Dr. [REDACTED] submission and the accompanying resume, it is not evident that Dr. [REDACTED] education and experience have equipped him with such elevated and particularized knowledge of educational requirements for positions such as the one proffered here that we should accord any probative weight to the opinion that he offered here.

In a July 23, 2014 letter from Dr. [REDACTED], Dr. [REDACTED] outlined the duties of the proffered position which are identical to the duties of the proffered position as previously provided by the petitioner to the USCIS, and he made the following assertions:

Overall, this [petitioning company's] job description including the additional SME duties for a specific aircraft program require the individual to maintain an industry

expert level of proficiency on the aircraft that exceed normal instructional knowledge levels. More importantly, training content transferred to customer pilots must be technically accurate, meet all regulatory requirements and contain well-written easy to understand text. Therefore, based upon the complexity of the job position, it is my professional opinion that a minimum of a Bachelor of Science degree in an Aviation related discipline is necessary to perform all of the required duties/responsibilities associated with this job position.

We reviewed the letters in their entirety. However, as discussed below, the letters from Dr. [REDACTED] and Dr. [REDACTED] are not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

Upon review of the opinion letters, we find that the opinions provided by Dr. [REDACTED] and Dr. [REDACTED] regarding the proffered position are written in the abstract and thus carry little probative value. There is no indication that either professor possesses any particular knowledge of the petitioner's proffered position and its business operations. Neither professor demonstrates or asserts in-depth knowledge of the petitioner's business or *how the duties of the position would actually be performed in the context of the petitioner's business enterprise*. There is no evidence that Dr. [REDACTED] and Dr. [REDACTED] have 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. Neither has provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent. Further, the professors reference no studies, research, surveys, or authoritative sources to support their findings.

We, in our discretion, may 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 letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The material deficiencies in the evidentiary record are decisive in this matter and they conclusively require that the appeal be dismissed. However, we will continue our analysis to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn to 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 the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>2</sup> As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Airline Pilots, Copilots and Flight Engineers" occupational category.

Based on a thorough review of the proffered duties of the position, as outlined in detail above, we find that the *Handbook's* entries for the "Career and Technical Education Teachers" and "Airline Pilots, Copilots and Flight Engineers" occupational classifications both contain aspects of the proposed duties. It is thus necessary to evaluate both occupational classifications to determine whether the proffered position is one that normally requires the level of knowledge of a body of highly specialized knowledge in aviation that is signified by attainment of at least a bachelor's degree, or its equivalent, in aviation or a closely-related specialty.

As discussed in the *Handbook*, career and technical educational teachers do not comprise an occupational category that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. In pertinent part, the *Handbook* states the following with regard to this occupational classification:

Career and technical education teachers instruct students in various technical and vocational subjects, such as auto repair, healthcare, and culinary arts. They teach academic and technical content to provide students with the skills and knowledge necessary to enter an occupation.

Career and technical education teachers typically do the following:

- Develop and plan lessons and assignments
- Instruct and demonstrate how to apply knowledge and to develop skills
- Demonstrate and supervise the safe and proper use of tools and equipment
- Monitor students' progress, assign tasks, and grade assignments
- Discuss students' progress with parents, students, and counselors
- Develop and enforce classroom rules and safety procedures

Career and technical education teachers help students explore and prepare to enter a specific occupation, such as ones in healthcare and information technology. They

<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. Our references to the *Handbook* are from the 2014-15 edition available online.

use a variety of teaching techniques to help students learn and develop skills related to a specific career or area of study. They demonstrate tasks, techniques, and tools used in an occupation. They may assign hands-on tasks, such as replacing brakes on cars, taking blood pressure, and recording vital signs to help students learn a specific skill. Teachers typically oversee these tasks in workshops and laboratories in the school.

Some teachers establish relationships with local businesses and nonprofit organizations to provide practical work experience for students.

The specific duties of career and technical education teachers vary by the grade and subject they teach. In middle schools and high schools, they teach in a classroom and through practical exercises in workshops and laboratories.

In postsecondary schools, they teach specific career skills that help students earn a certificate, diploma, or an associate degree, and prepare them for a specific job. For example, welding instructors teach students various welding techniques and essential safety practices. They also monitor the use of tools and equipment, and have students practice procedures until they meet the specific standards required by the trade.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Career and Technical Education Teachers," <http://www.bls.gov/ooh/education-training-and-library/career-and-technical-education-teachers.htm#tab-2> (accessed May 4, 2015).

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

Career and technical education teachers in public schools generally need a bachelor's degree in the field they teach, such as agriculture, engineering, or computer science.

Depending on the subject they teach, some enter the occupation with a high school diploma or an associate's degree after some years of related work experience. For example, teachers who instruct automotive mechanics need years of experience working as a mechanic. Some career and technical education teachers who have a high school diploma may be required to complete a degree while teaching to meet the full certification requirements.

*Id.* at <http://www.bls.gov/ooh/education-training-and-library/career-and-technical-education-teachers.htm#tab-4> (accessed May 5, 2015).

These statements do not support a conclusion that a bachelor's degree in a specific specialty, or its equivalent, is normally required for employment as a career and technical education teacher. The *Handbook* clearly indicates that some enter the occupation with a high school diploma or an associate's degree. Thus, it appears that for the duties the beneficiary would be performing for the

petitioner that would be normally performed by career and technical education teachers, the *Handbook* indicates entry does not normally require at least a bachelor's degree, or the equivalent, in a specific specialty.

Numerous other duties proposed for the beneficiary are generally similar to those described in the *Handbook* as normally performed by airline pilots, copilots and flight engineers.

In pertinent part, the *Handbook* states the following with regard to this occupational classification:

Airline and commercial pilots fly and navigate airplanes, helicopters, and other aircraft. Airline pilots fly for airlines that transport people and cargo on a fixed schedule. Commercial pilots fly aircraft for other reasons, such as charter flights, rescue operations, firefighting, aerial photography, and aerial application of agricultural materials.

Pilots typically do the following:

- Check the overall condition of the aircraft before and after every flight
- Ensure that the aircraft is balanced and below its weight limit
- Ensure fuel supply is adequate, weather conditions are acceptable, and submit flight plans to air traffic control
- Communicate with air traffic control over the aircraft's radio system
- Operate and control aircraft along planned routes, and during takeoffs, and landings
- Monitor engines, fuel consumption, and other aircraft systems during flight and respond to any changes in weather or other events, such as engine failure
- Navigate the aircraft by using cockpit instruments and visual references

Many aircraft used for hire use two pilots. The most experienced pilot, the captain or pilot in command, supervises all other crew members and has primary responsibility for the flight. The copilot, often called the first officer or second in command, shares flight duties with the captain. Some older planes require a third pilot known as a flight engineer, who monitors instruments and operates controls. New technology has automated many of these tasks, and new aircraft do not require flight engineers.

Pilots must have good teamwork skills because they must work closely with other pilots on the flight deck, as well as with air traffic controllers and flight dispatchers. They need to be able to coordinate actions and provide clear and honest feedback.

Pilots plan their flights carefully by making sure the aircraft is operable and safe, that the cargo has been loaded correctly, and that the weather conditions are acceptable. They file flight plans with air traffic control that they may modify in flight because of weather conditions or other factors.

Takeoffs and landings can be the most difficult parts of the flight and require close coordination between the pilot, copilot, and flight engineer, if present. Once in the air, the captain and first officer usually alternate flying activities so each can rest. After landing, pilots must fill out records that document their flight and the status of the aircraft.

Many pilots will have some contact with passengers and customers. Charter and corporate pilots will often need to greet their passengers before embarking. Some airline pilots may have to help handle customer complaints.

Commercial pilots employed by charter companies usually have many more nonflight duties than airline pilots have. Commercial pilots may have to schedule flights, arrange for maintenance of the plane, and load luggage themselves.

With proper training, airline pilots may also be deputized as federal law enforcement officers and be issued firearms to protect the cockpit.

Pilots who routinely fly at low levels must constantly look for trees, bridges, power lines, transmission towers, and other dangerous obstacles. This is a common danger to agricultural pilots and air ambulance helicopter pilots, who frequently land on or near highways and accident sites that do not have improved landing sites.

The following are examples of types of pilots:

***Airline pilots*** are commercial pilots who primarily work for airlines that transport passengers and cargo on a fixed schedule.

***Commercial pilots*** are involved in unscheduled flight activities, such as aerial application, charter flights, aerial photography, and aerial tours.

***Flight instructors*** are commercial pilots who use simulators and dual-controlled aircraft to teach students how to fly.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed. "Airline Pilots, Copilots and Flight Engineers," <http://www.bls.gov/ooh/transportation-and-material-moving/airline-and-commercial-pilots.htm#tab-2> (last visited May 4, 2015).

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

Airline pilots typically need a bachelor's degree in any subject, along with a commercial pilot's license and an Airline Transport Pilot (ATP) certificate from the FAA. Airline pilots typically start their careers in flying as commercial pilots. Pilots usually accrue thousands of hours of flight experience to get a job with regional or major airlines.

The military has traditionally been an important source of experienced pilots because of the extensive training provided. However, increased duty requirements have reduced the incentives for these pilots to transfer out of military aviation and into civilian aviation. Most military pilots who transfer to civilian aviation are able to transfer directly into the airlines rather than working in commercial aviation.

Commercial pilots must have a commercial pilot's license and typically need a high school diploma or the equivalent. Some employers will have additional requirements. For example, agricultural pilots will need to have an understanding of common agricultural practices, fertilizers, fungicides, herbicides, and pesticides. Flight instructors will have to have special FAA-issued ratings, such as the Certified Flight Instructor (CFI), CFI-Instrument (CFII), Multi-Engine Instructor (MEI), MEI-Instrument (MEII), and possibly others. Many other requirements exist for other specialties. They range from glider and banner towing to helicopter and airship qualifications.

Commercial pilots typically begin their flight training with independent FAA-certified flight instructors or at schools that offer flight training. The FAA certifies hundreds of civilian flight schools, which range from small FBOs to large state universities. Some colleges and universities offer pilot training as part of a 2- or 4-year aviation degree. Regardless of whether pilots attend flight schools or learn from independent instructors, all pilots need the FAA's commercial pilot license before they can be paid to fly. Additionally, most commercial pilots need an instrument rating. Instrument ratings are typically needed to fly through clouds or other conditions that limit visibility. An instrument rating is required to carry paying passengers over 50 miles from the point of origin or at night.

Interviews for positions with major and regional airlines often reflect the FAA exams for pilot licenses, certificates, and instrument ratings, and can be intense. Airlines will often conduct their own psychological and aptitude tests in order to make sure that their pilots are of good moral character and can make good decisions under pressure.

Airline and commercial pilots who are newly hired by airlines or on-demand air services companies must undergo moderate-term on-the-job training in accordance with the Federal Aviation Regulations (FARs). This training usually includes 6-8

weeks of ground school and 25 hours of flight time. Additionally, commercial pilots may need specific training based on the type of flying they are doing. For example, those who work in aerial application need training in agricultural practices and fertilizers, pesticides, and other substances that can be applied to crops by air to increase yield or production efficiency. Additionally, various type ratings for specific aircraft, such as the Boeing 737 or Cessna Citation, are typically acquired through employer-based training and are generally earned by pilots who have at least the commercial license.

In addition to initial training and licensing requirements, all pilots must maintain recency of experience in performing certain maneuvers. This means that pilots must perform specific maneuvers and procedures a given number of times within a specified amount of time. In addition, pilots must undergo periodic training and medical examinations, generally every year or every other year.

*Id.* at <http://www.bls.gov/ooh/transportation-and-material-moving/airline-and-commercial-pilots.htm#tab-4> (last visited May 4, 2015).

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. While the *Handbook* reports that employers typically require a bachelor's degree, employers' preference for degreed job candidates is not synonymous with the normally required language of the first criterion. Employer preference indicates only that employers find degrees desirable. It is, therefore, insufficient to establish that a baccalaureate or its equivalent is normally the minimum requirement for entry into the particular position. Moreover, the *Handbook* does not indicate that employers seeking degreed pilots require these pilots to hold degrees in fields that are directly related to their employment, as required for classification as a specialty occupation. The *Handbook* specifically states that a "bachelor's degree in any subject" would suffice. Finally, we note the *Handbook's* statement that "commercial pilots. . . typically need a high school diploma or the equivalent." The *Handbook* thus does not indicate that a minimum of a bachelor's degree in a specific specialty, or its equivalent, is normally required for this occupational category. Instead, this category accommodates a wide spectrum of educational credentials, and that spectrum includes credentials that fall short of a bachelor's degree.

Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position being proffered would involve services at a level requiring the theoretical and practical application of at least a bachelor's-degree level of a body of highly specialized knowledge in aviation.

In the instant matter, we find that those job duties listed by the petitioner that do generally fall within those described in the *Handbook* are generalized descriptions of generic functions. As such, they do not establish that their performance requires the theoretical and practical application of at least a bachelor's-degree level of a body of highly specialized knowledge in a specific specialty.

Finally, we here refer the petitioner back to our earlier comments and findings with regard to Dr. [REDACTED] and Dr. [REDACTED] letters. As noted above, we find that the letters do not establish 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. 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.

Next, we find that the job-vacancy announcements submitted by counsel 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 three of the job-vacancy announcements are for faculty positions at universities and one job-vacancy announcement is for an organization called '[REDACTED]'. Under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions among similar organizations* (emphasis added)." For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. 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 similar and 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

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.

Moreover, 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 "Faculty and Flight Training Instructors" only states "Bachelor's degree" without any specification of any particular academic major. Likewise, the [REDACTED] advertisement for an "Airbus Technical Trainer" specifies a "Bachelors Degree from an accredited college or university" with no indication that the bachelor's degree must be in any particular area or equivalent to a bachelor's or higher degree in a specific specialty.

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

Thus, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

The record of proceeding does not include any discussion and documentation of the proffered position sufficient to show that the proposed duties, or any aspects of the particular position here proffered, constitute a position so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty. The petitioner therefore has not established 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 a bachelor's degree, or the equivalent, in a specific specialty.

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 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 establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. As recognized by the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

The director's May 8, 2014 RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. The RFE included the following specific request for such documentation:

**Position Announcement:** To support the petitioner's contention that the position is a "specialty occupation," provide copies of the petitioner's present and past job vacancy announcements. The petitioner may also provide classified advertisements soliciting for the current position, showing that the petitioner requires its applicant to have a minimum of a baccalaureate or higher degree or its equivalent in a specific specialty.

**Past Employment Practices:** Provide evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree, or higher in a specific specialty, to perform the duties of the proffered position....

In response to the RFE, the petitioner explained that it does not have position announcements for the proffered position as it is their practice to select among current instructors for the proffered position. The petitioner further explains that they currently have seven instructors with Subject Matter Expert duties and all have bachelor's degrees or the equivalent in the aviation field. However, we note that the petitioner's documentation represents a claim regarding the individuals' educational credentials, rather than evidence to support that claim. Notably, the petitioner did not submit probative evidence regarding the seven instructors' academic credentials (e.g., transcripts), and the petitioner did not present whatever objective measures it determined that degree-equivalency for those without at least a bachelor's degree. Moreover, the petitioner did not provide the job duties and day-to-day responsibilities of the positions that it claims are the same or similar as the proffered position. The petitioner did not provide any information regarding the relative complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. It is unclear whether the duties and responsibilities of these individuals are the same or related to the proffered position. We observe that the petitioner did not submit any documentation regarding its recruiting practices. Thus, the submission has no probative value. As we have already noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

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

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

As reflected in this decision's earlier discussion of the duty descriptions in relation to the second alternate prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has provided no objective standard that supports the nature of the proposed duties as being so specialized and complex that their performance would require knowledge that is usually associated with a particular level of education in a specific specialty. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and persuasive explanation to establish that the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations would require the services of a person with qualifications above those required by Federal Aviation Administration regulations to serve as an FAA-certified flight instructor at a pilot school – and the petitioner has provided no evidence that such regulations require at least a bachelor's degree in aviation or a closely related specialty. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex as to require knowledge usually associated with at least a bachelor's degree in a specific specialty, or the equivalent.

For all of these reasons, the evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

#### IV. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not satisfy 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.

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. The appeal will be dismissed and the petition denied for this reason.

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