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U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Administrative Appeals Office (AAO)

20 Massachusetts Ave., N.W., MS 2090

Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: MAY 13 2015

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

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

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a software development consulting and training company. In order to employ the beneficiary in what it identifies as a position in the "Computer Systems Analysts" occupational category, with "Business System Analyst" as its job title,¹ 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 failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding 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.

For the reasons that will be discussed in this decision, we conclude that the director's decision to deny the petition for its failure to establish that the proffered position qualifies for classification as a specialty occupation was correct. 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.

* * *

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 15-1121, the associated Occupational Classification of "Computer Systems Analysts," 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*, we find that the director's determinations in this matter were correct. 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 AND FACTUAL BACKGROUND

According to the petitioner, it seeks approval of this H-1B specialty occupation petition so that it can assign the beneficiary, on a full-time basis, to a particular end-client, specifically, [REDACTED] (For brevity's sake, we will hereafter refer to [REDACTED] as '[REDACTED]')

As we noted earlier, as the requisite LCA corresponding to the petition, the petitioner submitted an LCA which had been certified for use with a job prospect within the occupational classification of "Computer Systems Analysts" - SOC (ONET/OES Code) 15-1121, at a Level I prevailing-wage rate. By that submission, the petitioner attested that the proffered position, to which it assigned the "Business System Analyst" title, belonged to the Computer Systems Analysts occupational group and merited only a Level I prevailing-wage rate (the lowest of the four that could be assigned).

In its undated letter of support, the petitioner's director described the petitioner as follows:

[The petitioner] is a dynamic and rapidly growing company that specializes in providing IT consulting and software development services to a diversified client base.

[The petitioner] has worked with a variety of end clients utilizing the right technology and project management to develop custom applications that have resulted in organizational growth. We start any project by uncovering the need and vision on how the end client believes technology will help their business. We move from here to understanding the end client's business, identifying their current tools and what tools are present in the marketplace.

[The petitioner] focuses on helping businesses cut back expenses with reliable consulting. [The petitioner's] primary objective is to help companies maximize their IT resources and meet the ever-changing IT needs and challenges.

The petitioner's letter of support provided a six bullet-point description of the proposed duties, which we shall quote and address later in this decision. The letter also stated the following regarding the requirements for the position:

The minimum requirements that we at [the petitioning company] establish for the position of a Business System Analyst include a bachelor's degree in a computer, engineering, business or finance related field.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 20, 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 a duplicate copy of the letter from the petitioner's director that had been submitted with the Form I-129. In addition, counsel submitted copies of job postings from the petitioner and from other companies; excerpts from the *Occupational Outlook Handbook* and the Occupational Information Network (O*NET) regarding the Computer Systems Analysts occupational group; and a previously submitted letter from [redacted] the purported end-client. In addition, counsel submitted a July 30, 2014 opinion letter from [redacted] MFA, Associate Professor of [redacted] College of Visual and Performing Arts, [redacted] University, regarding the proffered position. Counsel also submitted duplicate documentation about the beneficiary's credentials and a print-out from the petitioner's website.

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 14, 2014, the director denied the petition.

On appeal, the petitioner submits a letter which outlines the duties inherent in the proffered position, with associated percentages of time that would be involved in their performance. We observe that the letter asserts job duties and responsibilities that were not provided earlier. In addition, the petitioner

submitted a September 8, 2014 letter from [REDACTED] Ph.D., Associate Professor, School of Business, University of [REDACTED]

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 agree with the director that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

III. THE SPECIALTY OCCUPATION ISSUE

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)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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.

As recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client company's job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. That is, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location in order to properly ascertain the minimum educational requirements necessary to perform those duties. *Id* at 387-388. The court held that the former INS had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. In other words, as the nurses in *Defensor v. Meissner* would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id* at 387-388.

B. Analysis

1. Material Expansion of the Duties on Appeal

To begin, we find that, on appeal, the petitioner has materially expanded the range and scope of the proposed duties that were presented to the director for consideration. The petitioner had listed six duties for the position when it submitted the H-1B petition, as quoted above; and, in its RFE reply, the petitioner resubmitted that same list of duties. On appeal, however, the petitioner has outlined 33 duties, and, for many, ascribes background and experience requirements that were not mentioned earlier (such as, for instance, "Must have experience gathering business requirements for advanced analytic teams" and "Must have experience with Data analysis to provide business value). On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). 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). Accordingly, we shall not consider the newly asserted duties that are submitted on appeal.

2. Preliminary Findings Regarding the Proposed Duties

The following excerpt from the aforementioned petitioner's support letter contains the outline of proposed duties that were presented to the director prior to her decision to deny the petition:

- Design content templates and layout for various programs, initiatives, and updates[.]

- Create Web UI and graphics for user friendly desktop[.]
- Manage and own the effective design and communication of team deliverables including newsletters, marketing Campaigns, Graphic publishing to various audiences including IT partners, Business Partners, End Users through multiple channels.
- Design and Create innovative desktop friendly sites for mobility information and support.
- Utilize and recommend efficient web technologies targeted to both Intranet and Internet.
- Work with Adobe Photoshop, Dreamweaver and MS Office Suite.

As a preliminary matter, we find that the evidence of record does not establish 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 Computer Systems Analyst² positions and duties by virtue of their level of specialization, complexity, and/or uniqueness, the petitioner also must present evidence that supports 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)). This the petitioner has not done.

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.

The petitioner asserts that the beneficiary would "[d]esign content templates and layout for various programs, initiatives, and updates," but it does not provide any substantial evidence or persuasive explanation to show how the exercise of those functions would elevate the proffered position and its duties above the level of specialization and/or complexity belonging to computer systems analyst positions that neither require, nor are usually associated with a requirement for, at least a bachelor's

² While the petitioner stated that the job title is "Business Systems Analyst," the petitioner also provided significant information about the "Computer Systems Analysts" occupational category. We note that pursuant to the O*NET Online, Business Systems Analyst is a job title that falls under Computer Systems Analyst. Further, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Computer Systems Analysts."

degree level of knowledge in any specific specialty. So, too, if there is such a relative level of complexity and/or specialization to the third bullet-description of duties that the petitioner says the beneficiary would "manage and own," such that that level would require the application of a particular educational level of a body of highly specialized knowledge in a particular specialty, it is not self-evident.

Likewise, the petitioner also has not substantiated any particular level of complexity and/or specialization in the remaining duties outlined by the petitioner (i.e., design and creation of desktop-friendly sites; utilization and recommendation of efficient Web technologies for Internet and Intranet; and "[w]ork with Adobe Photoshop, Dreamweaver, and MS Office Suite)," let alone established a correlation between those duties' relative complexity and/or specialization and a need to apply at least a bachelor's degree level of a body of highly specialized knowledge in any specific specialty.

The record does not detail the substantive work and associated applications of specialized knowledge that would be involved in the referenced duties. 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 Computer Systems Analyst positions that do not require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent.

We further note that the range of acceptable degree-majors or academic concentrations specified by the petitioner weigh against its argument that performance of the proffered position requires at least a bachelor's degree in a specific specialty.

3. Adverse Implication of the Range of Degree Majors Asserted as Suitable for the Proffered Position

The petitioner stated that "[t]he minimum requirements that we at [the petitioning company] establish for the position of a Business System Analyst include a bachelor's degree in a computer, engineering, business or finance related field." 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" 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 disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes

even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, in the letter of support, the petitioner stated that its minimum educational requirement for the proffered position is a bachelor's degree in a computer, engineering, business or finance related field. However, the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer systems analysis or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, simply fails to establish either (1) that all of the disciplines (including any and all engineering fields) are closely related fields, or (2) that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty*, or its equivalent, for entry into the particular position, the record of proceeding does not support the proffered position as being a specialty occupation and, in fact, it supports the opposite conclusion.

Furthermore, the petitioner's claim that a bachelor's degree in "business" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).³

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. Absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. The director's decision must therefore be affirmed and the petition denied on this basis alone.

4. The Two Submissions Offered as Expert Opinions

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted a September 8, 2014 four-page letter from [REDACTED] Associate Professor of Computer Applications and Information Systems, School of Business, University of [REDACTED] who made the following assertions:

I have had the opportunity over the years to become familiar with the qualifications required to attain the position of Business System Analyst and similar professional positions, and the specialized and unique needs of the companies that recruit graduates for this position. . . .

* * *

It is clear to me that the knowledge and skills required to successfully perform the duties for this position are at a level of specialty and complexity that the position meets the requirements for a Specialty Occupation as defined by the United States Citizenship and Immigration Services, which requires the attainment of a minimum of a Bachelor's Degree. Additionally, it is my opinion as a scholar in the field of Information Technology and as one with professional experience in the same that it is the industry standard for a provider of comprehensive IT services such as [the petitioning company] to hire a Business System Analyst or someone in a similar professional position, and require the minimum attainment of a Bachelor's Degree in Digital Design, or the equivalent for the position.

for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

In addition, the petitioner submitted a July 30, 2014 six-page letter from [REDACTED] MFA, Associate Professor of [REDACTED] College of Visual and Performing Arts, [REDACTED] University, who made the following assertions:

It is typical for an IT consulting and software development firm with approximately 90 employees and \$6.8 million in annual income to hire a Business System Analyst or someone in a similar professional position, and require the minimum attainment of a Bachelor's Degree in Digital Design, Multimedia, or a related area for the position.

We reviewed the letters in their entirety. However, as discussed below, the letters are not probative evidence towards establishing that the proffered position qualifies as a specialty occupation position.

Upon review of the opinion letters, we find no indication that either Professor [REDACTED] or Professor [REDACTED] possess substantial knowledge of the petitioner's proffered position and its business operations. Rather, it appears that they rested their opinions upon the generically stated functions that they list in their letters. The evaluators do not demonstrate that the bases of their evaluations included substantial knowledge about the petitioner's specific business operations and the specific, substantive work that the beneficiary would actually perform in the context of the petitioner's particular operations. Further, neither Professor [REDACTED] letter nor Professor [REDACTED] indicate that either professor visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that the workers apply on the job.

Furthermore, there is no indication that the petitioner advised either of the evaluators that the petitioner characterized the proffered position as low and entry-level, for a beginning employee who has only a basic understanding of the occupation (as indicated by the Level I wage-level on the LCA). As we shall discuss in detail below, that prevailing wage-rate is 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. We find this to be a relevant aspect of the position, as it reflects an assessment by the petitioner, who submitted the LCA as corresponding to the petition, that the proffered position is of relatively low complexity in relation to other jobs within the position's occupational group. In this respect too, we find that the evaluators' opinions are not based upon a sufficient factual foundation. Without this LCA information, the petitioner has not demonstrated that either Professor [REDACTED] or Professor [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the educational requirements based upon the associated job duties and responsibilities.

Moreover, we find that Professor [REDACTED] and Professor [REDACTED] do not provide an adequate factual and analytical foundation for their ultimate conclusions that the proffered position qualifies as a specialty occupation. Both evaluators opine about normal hiring practices, but they provide no documentary support for their statements in this regard. Further, neither professor cites studies,

industry publications, surveys, or any authoritative source for either their findings or the ultimate conclusions that they base upon those findings.

In short, we find that Professor [REDACTED] and Professor's [REDACTED] documents are conclusionary and framed in assertions which the professors do not substantiate about the particular position here proffered and about relevant recruiting and hiring practices. Also, despite their self-endorsement, there is nothing in their letters, their resumes, or any documentation in the record that establishes them as individuals to whom we should defer to as a recognized authority in the area in which they here opine, which is the minimum educational requirements to perform the particular position here proffered.

Consequently, upon considering and weighing the content of both Professor [REDACTED] and Professor [REDACTED] submissions, we find that neither is probative evidence towards satisfying any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 its discretion we discount each of the advisory opinion letters 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 Professor [REDACTED] and Professor [REDACTED] letters are hereby incorporated as part of this decision's later analyses of the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

As the above discussion and findings are an intrinsic part of our analysis of each of the criteria at C.F.R. § 214.2(h)(4)(iii)(A), we hereby incorporate them into the analysis of each criterion that follows below.

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

The material deficiencies in the evidentiary record that we discussed above are decisive in this matter and they conclusively require that the appeal be dismissed. However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in the record that would also require dismissal of the appeal.

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.⁴ As noted above, the petitioner submitted an LCA in support of this position certified for a job offer falling within the "Computer System Analysts" occupational category.

The *Handbook's* discussion of the duties and educational requirements of the Computer System Analysts occupational group states, in pertinent part, the following:

Computer System Analysts typically do the following:

- Consult with managers to determine the role of the IT system in an organization
- Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
- Prepare an analysis of costs and benefits so that management can decide if information systems and computing infrastructure upgrades are financially worthwhile
- Devise ways to add new functionality to existing computer systems
- Design and develop new systems by choosing and configuring hardware and software
- Oversee the installation and configuration of new systems to customize them for the organization
- Conduct testing to ensure that the systems work as expected
- Train the system's end users and write instruction manuals

Computer systems analysts use a variety of techniques to design computer systems such as data-modeling, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. Analysts conduct in-depth tests and analyze information and trends in the data to increase a system's performance and efficiency.

Analysts calculate requirements for how much memory and speed the computer system needs. They prepare flowcharts or other kinds of diagrams for programmers or engineers to use when building the system. Analysts also work with these people

⁴ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2014-15 edition available online.

to solve problems that arise after the initial system is set up. Most analysts do some programming in the course of their work.

Most computer systems analysts specialize in certain types of computer systems that are specific to the organization they work with. For example, an analyst might work predominantly with financial computer systems or engineering systems.

Because systems analysts work closely with an organization's business leaders, they help the IT team understand how its computer systems can best serve the organization.

In some cases, analysts who supervise the initial installation or upgrade of IT systems from start to finish may be called IT project managers. They monitor a project's progress to ensure that deadlines, standards, and cost targets are met. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers.

Many computer systems analysts are general-purpose analysts who develop new systems or fine-tune existing ones; however, there are some specialized systems analysts.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer System Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (accessed April 9, 2015).

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

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

Most computer system analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

* * *

Although many computer system analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems->

analysts.htm#tab-4 (accessed April 9, 2015).

The statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into this occupation. With regard to the *Handbook's* statement that "most" computer system analysts possess a bachelor's degree in a computer-related field, it is noted that the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of Computer System Analyst positions require at least a bachelor's degree or a closely related field, it could be said that "most" system analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act.

Additionally, with regard to positions that do require attainment of a bachelor's degree or equivalent, the *Handbook* indicates that a bachelor's degree in a specific specialty or the equivalent is not normally required: the *Handbook* states that technical degrees are not always required, and that many computer system analysts have liberal arts degrees and gained their programming or technical expertise "elsewhere."

In addition, we note that the Occupational Information Network (O*NET) Summary Report for Computer Systems Analysts submitted by counsel is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. Contrary to the assertions of counsel, O*NET OnLine does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

We here refer the petitioner back to our earlier comments and findings with regard to Professor [REDACTED] and Professor [REDACTED] letters. As discussed above, we find that the letters are not probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, it is noted that the petitioner submitted an LCA certified for a Computer Systems Analyst job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position

relative to others within the same occupation, which signifies that the beneficiary is only expected to possess a basic understanding of that occupation.⁵

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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

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

Here and as already discussed, the 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. Nor are there any submissions from a professional association in the petitioner's industry stating 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. Nor has the petitioner submitted any letters or affidavits from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals.

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.

⁵ The proposed duties' levels of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. A Level I wage is appropriate for a proffered position that is a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA with a Level I wage rate, the petitioner effectively attests that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring 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. 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.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

First, we note that under the first prong of 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. 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.

Further, 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. This aspect of the record is a function of the fact that neither the job-duty descriptions in the advertisements, nor those which the petitioner prepared about the proffered position, are sufficiently detailed to show their relative complexity or specialization, or the associated applications of specialized knowledge that their performance would require within the particular context of each employer's business operations. Accordingly, there is an inadequate evidentiary basis for recognizing the advertised positions as parallel to the proffered position or even to themselves.

Further, some of the advertisements clearly appear to be for positions that are not parallel to the particular one that is the subject of this petition. For example, [REDACTED] requires "6-8 years of experience working with Financial or Human Resource Management systems in a corporate IT department." Similarly, [REDACTED] requires "3+ years administration, functional support, design, development and test experience with Oracle eBusiness Suite, Reports, API's and interfaces." As previously discussed, the petitioner designated the proffered position on the LCA as a Level I (entry level) position, and these advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of these advertised positions are parallel to the proffered position.

(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, 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."

In this particular case, the petitioner has not credibly demonstrated that the duties which the beneficiary would perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

We here refer the petitioner back to our earlier comments and findings with regard to the lack of evidence of a particular level of complexity or uniqueness, which we incorporate into the present analysis. The record of proceeding does not contain sufficient evidence to establish relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's in a specific specialty or its equivalent is required to perform that position. Rather, the petitioner and the end-client have not distinguished either the proposed duties, or the position that they comprise, from generic Computer Systems Analyst work, which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, we find that assertions of the requisite complexity or uniqueness are undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within the same occupation. We incorporate here by reference and reiterate our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation. This factor is inconsistent with the level of relative complexity and uniqueness required to satisfy this second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Based upon the prevailing-wage rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that prevailing-wage rate is appropriate for positions in which the beneficiary would perform routine tasks requiring limited, if any, exercise of independent judgment; in which the beneficiary's work would be closely supervised and monitored; in which the beneficiary would receive specific instructions on required tasks and expected results; and in which the beneficiary's work would be reviewed for accuracy. See U.S. Dept of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

Again, the *Handbook* indicates that there are positions located within the "Computer Systems Analysts" occupational category which are performed by persons without at least a bachelor's degree in a specific specialty or the equivalent. Accordingly, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review would be so complex or unique relative to Computer System Analysts positions in general that it could only be performed by a person with at least a bachelor's degree in a specific specialty or the equivalent. Even more fundamentally, as discussed in detail above, the evidence of record does not establish that the proffered position possesses the relative complexity or uniqueness required to satisfy this criterion.

As the evidence of record therefore does not establish that 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.

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 a petitioner's 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.

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

With respect to this criterion, the petitioner has submitted "current and previous job postings stating their positions require at least a Bachelor's Degree."⁶

First, while some of the advertisements bear the title "Business System Analyst," it is the nature of the duties comprising the advertised positions that would determine whether those positions are in

⁶ We note that two of the job advertisements are illegible. Consequently, we can discern neither the positions nor the advertisements' information about them.

fact parallel to the proffered position. However, we see that the duty descriptions are not substantially similar to the proffered position's duties as stated in the petitioner's letters submitted with the H-1B petition and in the petitioner's RFE response. We also see that the extensive IT experience that some of the job advertisements specify as hiring requirements suggest that they involve the application of greater occupational knowledge than the proffered position, a Level I position.

Additionally, many of the submitted advertisements do not specify a requirement for a bachelor's or higher degree in a specific specialty or its equivalent. By way of example, the advertisement for "Business Analyst Job," posted on August 28, 2013, only states "Masters" without any specification of any particular academic major.

As the submitted vacancy-announcements are not probative evidence towards satisfying this criterion, further analysis of their content is not necessary. 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 the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, 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.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* information about positions falling within the Computer Systems Analysts occupational category. Again, the *Handbook* does not indicate that a bachelor's or higher degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions; and the record indicates no factors that would elevate the duties proposed for the beneficiary above those of other entry-level positions generally discussed in the *Handbook*. As reflected in this decision's earlier discussion of the duty descriptions that were presented in the petitioner's letter of support, the proposed duties as described in the record of proceeding do not convey such a level of specialization and complexity that their performance would require knowledge that is usually associated with at least a bachelor's degree 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 explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. 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.

Additionally, we find that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a Level I prevailing-wage rate, the petitioner effectively attests that the proposed duties are of relatively low

complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required to satisfy this criterion.

The *Prevailing Wage Determination Policy Guidance* issued by DOL states the following with regard to Level I wage rates:

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 [emphasis in original].

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.flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Id.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that the Level II wage-rate itself is associated with performance of only "moderately complex tasks that require limited judgment," is indicative of the relatively low level of complexity imputed to the proffered position by virtue of the petitioner's Level I wage-rate designation. Further, we note the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated in the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained,

either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

Id.

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Id.

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

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation.

IV. PRIOR H-1B APPROVALS

Counsel for the petitioner noted on appeal that "this position has been used for many years by employers and approved by USCIS as a specialty occupation." If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. See *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, this office's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

V. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation.

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.").

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. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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