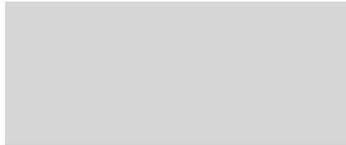


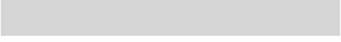


U.S. Citizenship  
and Immigration  
Services

(b)(6)

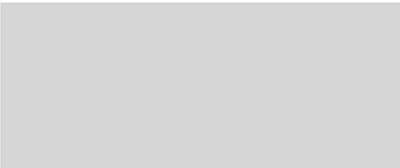


DATE: **MAY 15 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director (hereinafter "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.

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a nine-employee "Insurance Management General Agency" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a part-time "Underwriter" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

On the Labor Condition Application (LCA) submitted with the petition, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 524210.<sup>1</sup> This NAICS code is designated for "Insurance Agencies and Brokerages." The U.S. Department of Commerce, U.S. Census Bureau website describes this NAICS code by stating the following: "This industry comprises establishments primarily engaged in acting as agents (i.e., brokers) in selling annuities and insurance policies." U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 524210 – Insurance Agencies and Brokerages, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 13, 2015).

The LCA states that the proffered position is an underwriter position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2053, Underwriters, from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

<sup>1</sup> According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/>.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in [REDACTED] from the [REDACTED] at [REDACTED] and a master's degree in [REDACTED] from [REDACTED].

The petitioner also submitted a letter, dated March 20, 2014 from [REDACTED], signing as the petitioner's CEO. As to the duties of the proffered position, Mr. [REDACTED] stated:

[The beneficiary] will examine documents to determine degree of risk from such factors as applicant financial standing and value and condition of property. He will write to field representatives, medical personnel, and others to obtain further information, quote rates, or explain company underwriting policies. [The beneficiary] will review company records to determine amount of insurance in force on single risk or group of closely related risks. He will evaluate the possibility of losses due to catastrophe or excessive insurance. [The beneficiary] will authorize reinsurance of policy when risk is high. He will decline excessive risks. [The beneficiary] will determine policy contract provisions for varies [sic] types of insurance that [the petitioner] offers. He will provide expertise to help [the petitioner] manage risks.<sup>2</sup>

As to the requisite education for the proffered position, Mr. [REDACTED] stated, "Given the above complex duties, the minimum education, training and experience necessary to perform such a job would be a Bachelor's degree." He also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as evidence that the proffered position qualifies as a specialty occupation position.

On May 6, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted, *inter alia*: (1) numerous vacancy announcements; (2) agency agreements, brokerage agreements, real estate inspection reports, and real property appraisals; and (3) a letter, dated July 16, 2014, from [REDACTED].

The agency agreements show that the petitioner has agreed to sell insurance policies issued by [REDACTED] and [REDACTED]. Those agreements indicate

<sup>2</sup> Some question exists pertinent to whether these would be the duties of an insurance underwriter in an insurance agency or brokerage. For instance, "managing risks" may be a function more appropriate to the insurance company, rather than to a brokerage. However, we will proceed with our analysis based on the assumption that the duties of the proffered position have been accurately described.

that the petitioner will sell insurance policies of types approved by those insurance companies, collect premiums, and receive commissions for such sales.

In his July 16, 2014 letter [REDACTED] reiterated that the proffered position requires a bachelor's degree.<sup>3</sup> He cited the *Handbook* and information from the O\*NET Internet site for the proposition that underwriter positions require a bachelor's degree. He also provided the following expanded description of the duties of the proffered position:

- **Examine documents to determine degree of risk from such factors as applicant financial standing and value and condition of property. (30% of the time)**
  - Study and analyze various policies proposals, ensure that coverage and premium are competitive in the market
  - Use statistical results and detailed risk information to decide whether a new or renewal business to be accepted or decline for a variety of lines
  - According to each carrier's underwriting guideline, set up factor coefficients based on property condition, applicant credit history, and liability requirement
  - Calculate policy premium with actuarial formulas and compose proposal to explain coverage and charges
  - Keep detailed and accurate records of policies underwritten and decisions made, and share the access to other underwriters in database.
  - Create submission log with automatic alert VBA macros in Excel to examine if risks violate the underwriting guideline. Once the risk info was entered in spreadsheet, alert will activate if the physical condition or applicant's financial standing failed to meet the guideline of certain insurance carriers, for instance, alert may pop up when the location is within 0.2 mile to coastal line in NYC five boroughs.
  
- **Write to field representatives, medical personnel, and others to obtain further information, quote rates, or explain company underwriting policies. (20% of the time)**
  - Administrate quarterly auditing for different lines, overhauled and implement statistics on thousands of financial reports and policy documents
  - Prepare common distributions in R, by using the following commands:
    - > library (MASS)
    - > fitdistr(x, 't')\$loglik
    - > fitdistr(x, 'normal')\$loglik

<sup>3</sup> Mr. [REDACTED] did not then state that the proffered position requires a bachelor's degree in any specific specialty, nor even in any range of specialties.

```
> fitdistr(x, 'logistic')$loglik
> fitdistr(x, 'weibull')$loglik
> fitdistr(x, 'gamma')$loglik
> fitdistr(x, 'lognormal')$loglik
> fitdistr(x, 'exponential')$loglik
```

and fit distributions for certain data set by

```
> fitdistr(x, 'beta', list(shape1 = n1, shape2= n2))
```

- Apply different discounts to submissions in order to make premium more competitive, such as new building discount, no loss discount, local security device discount, multi-line discount, non-smoker discount
  - Answer questions about policy coverage for brokers, insured, mortgagee lien holders, insurance regulation board, and government personnel; list what kind of loss may be covered and what may not be.
  - Explain the reasons that a submission is rejected. Recommend what actions have to be taken in order to get each risk approved, such as hire licensed and qualified contractors to update knob and tube electricity device to circuit breakers
- **Review company records to determine amount of insurance in force on single risk or group of closely related risks. (15% of the time)**
    - Took 8 years policy and submission data as the sample, assume the population under bootstrap, use [formula omitted] to determine the bootstrap confidence interval.
    - Calculate the minimum required sample to study the standard deviation of loss ratio by using [formula omitted], where MOE (Margin of Error) is 2.5% or 5%
    - Research seasonality of loss with **ARIMA (1, 0, 0) x (1, 0, 0)<sub>12</sub>** model, figure out high loss risk type, frequent fire loss month and seasonal high loss territories.
  - **Evaluate possibility of losses due to catastrophe or excessive insurance. (10% of the time)**
    - Calculate the first loss term expectation with **ARIMA (1, 0, 0) x (1, 0, 0)<sub>12</sub>** model, and use the result as guide in new business acceptance and renewal decision making.
    - Examine distribution in graphical theory, eliminate outliers within rejection region [formula omitted] when the distribution of graphics appears to be heavy-tailed, such as the graph below:

[Graph omitted.]

    - Review different types of inspections for both new business and renewal policies. Compose recommendation letters for necessary repair work. Determine high-risk properties based on

inspection report and same type property condition distribution for direct cancellation or non-renew

- **Authorize reinsurance of policy when risk is high. Decline excessive risks. (10% of the time)**
  - Determine if the loss ratio could be summarized as a single statistics [formula omitted] and if a prior parameter is a scale parameter [formula omitted]
  - Estimate expectation of the ceiling on the amount of the underwriting risk
  - Explicitly recognize of the time value through the use of experience accounts funded by larger reinsurer premiums, which accumulate investment profit over time and the fund loss payment
  - Include a commutation clause that allow for profit sharing between the cedent and reinsurer contract
  - Compose multi-year contracts that allow the cedent to mitigate volatility by recognizing a loss gradually
  
- **Determine policy contract provisions for varies [sic] types of insurance that [the petitioner] offers. (10% of the time)**
  - Utilize the detailed line-by-line interpretations of commercial general and umbrella/excess liability policy language, including all countrywide ISO endorsements, to help answer coverage questions, modify policies, and negotiate premiums.
  - Identify and eliminate gaps in coverage between primary Commercial General Liability and existing umbrella/excess liability policies
  - Keep up with emerging loss exposures and how they might affect underwriting decisions; follow trends and developments in coverage approaches for all lines of insurance.
  - Use as third-party support to company efforts at negotiating claims on behalf of insured's or communicating the rationale of denials to insured's.
  
- **Provide expertise to help [the petitioner] manage risks. (5% of the time)**
  - Maintain database, clean system trash created in daily use, correct mistyped information, validate data structure, run data back up and update insurance agency management software Prime
  - Create pivot table on Excel to conclude and illustrate the market volume and loss ratio of risks with certain categorical or terrestrial constraints
  - Monitor competitors' pricing, lines of business, and underwriting guideline via A.M. Best official websites to keep carrier finance and marketing information updated

Mr. [REDACTED] stated that he is the petitioner's CEO and senior underwriter, and also identified [REDACTED] as people whom the petitioner employs, or has employed, as underwriters. Mr. [REDACTED] stated that he and [REDACTED] have master's degrees in business

administration and juris doctorates, and [redacted] and [redacted] have master's degrees in Actuarial Science.

The director denied the petition on August 11, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies for classification as a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner submitted, *inter alia*: (1) a vacancy announcement placed by the petitioner for a "P&C Underwriter" position; (2) vacancy announcements placed by other companies; (3) an evaluation of the proffered position, dated September 5, 2014; (4) a letter from [redacted], the petitioner's CEO, dated September 8, 2014; and (5) a brief.

The petitioner's vacancy announcement states that its P&C Underwriter position requires a bachelor's degree in finance, statistics, or mathematics and "1-2 years of P&C underwriting experience."

The September 5, 2014 position evaluation was prepared by [redacted] who stated that he is a professor in the department of applied mathematics and statistics at [redacted]. Professor [redacted] reiterated portions of the duty description contained in [redacted]'s July 16, 2014 letter, and stated that, based on those duties, the proffered position requires a minimum of a bachelor's degree in finance, statistics, or mathematics. As to various duties described, Professor [redacted] stated:

To perform the above duties, the candidate needs to utilize the knowledge of Deterministic Models in Operation Research.

\* \* \*

To perform the above duties, the candidate needs to utilize the knowledge of Multivariable Models in Advanced Data Analysis.

\* \* \*

To perform the above duties, the candidate needs to utilize the knowledge of Linear Regression and Time Series Analysis.

\* \* \*

To perform the above duties, the candidate needs to utilize the knowledge of Interest Models and Interest Theory in Financial Mathematics.

\* \* \*

To perform the above duties, the candidate needs to utilize the knowledge of simulation method in the Stochastic Process.

In his September 8, 2014 letter, [REDACTED] reiterated the original duty description he provided in his March 20, 2014 letter and stated that the proffered position requires a bachelor's degree in finance, statistics, or mathematics.

In its brief, the petitioner also reiterated the March 20, 2014 duty description and stated that the proffered position requires a bachelor's degree in finance, statistics, or mathematics.

## II. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

### A. The Law

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. Analysis

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-2053, Insurance Underwriters, from O\*NET. The *Handbook* states the following about the educational requirements of insurance underwriter positions:

#### **How to Become an Insurance Underwriter**

Employers prefer to hire candidates who have a bachelor's degree. However, insurance-related work experience and strong computer skills may be enough. Certification is necessary for advancement to senior underwriter and underwriter manager positions.

<sup>4</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

## **Education**

Most firms prefer to hire applicants who have a bachelor's degree. Courses in business, finance, economics, and mathematics are particularly helpful.

## **Training**

Beginning underwriters usually work as trainees under the supervision of senior underwriters. Trainees work on basic applications and learn the most common risk factors. As they gain experience, they become responsible for more complex applications and work independently.

## **Licenses, Certifications, and Registrations**

Employers often expect underwriters to get certification through coursework. These courses are important for keeping current with new insurance policies and adjusting to new technology and changes in state and federal regulations. Certification is often necessary for advancement to senior underwriter and underwriter management positions. Many certification options are available.

For underwriters with at least 3 years of insurance experience, The Institutes offers the Chartered Property and Casualty Underwriter (CPCU) designation.

For beginning underwriters, The Institutes offers a training program. The Institutes also offers two special designations, an Associate in Commercial Underwriting (AU) and an Associate in Personal Insurance (API). To earn either the AU or API designation, underwriters complete a series of courses and exams that generally take 1 to 2 years.

The American College of Financial Services also offers an introductory course in basic insurance concepts: The Life Underwriter Training Council Fellow (LUTCF). They also offer a Chartered Life Underwriter (CLU) and Registered Health Underwriter (RHU) designation.

## **Important Qualities**

**Analytical skills.** Underwriters must be able to evaluate information from a variety of sources and solve complex problems.

**Decision-making skills.** Underwriters must consider the costs and benefits of various decisions and choose the appropriate one.

**Detail oriented.** Underwriters must pay attention to detail, because each individual item on an insurance application can affect the coverage decision.

**Interpersonal skills.** Underwriters need good communication and interpersonal skills because much of their work involves dealing with other people, such as insurance agents.

**Math skills.** Determining the probability of losses on an insurance policy and calculating appropriate premiums require mathematical ability.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Insurance Underwriters," <http://www.bls.gov/ooh/business-and-financial/insurance-underwriters.htm#tab-4> (last visited May 13, 2015).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position under this occupational category at a Level I on the LCA.<sup>5</sup> This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship.

The *Handbook* makes clear that insurance underwriter positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* states, "Most firms prefer

<sup>5</sup> The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

to hire applicants who have a bachelor's degree [for insurance underwriter positions]." That indicates that a minimum of a bachelor's degree in a specific specialty or its equivalent is not a requirement for two reasons. First, a preference is not a minimum requirement. As such, it does not indicate that a bachelor's degree is required for underwriter positions. Second, even as to those underwriter positions that may require a degree, it does not indicate that the degree must be in a specific specialty. It states, "Courses in business, finance, economics, and mathematics are particularly helpful," but does not state that a degree in one of that list of subjects is required. Finally, even if insurance underwriter positions required that a candidate have a degree in a subject in that wide array, that would not be a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.<sup>6</sup>

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion.

The petitioner also cited O\*NET to satisfy this criterion. However, O\*NET does not state a requirement for a bachelor's degree. Rather, it assigns insurance underwriters a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the O\*NET does not indicate, even as to those Job Zone Four positions that may require a bachelor's degree, that the requisite bachelor's degrees must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O\*NET information is not probative of the proffered position's being a specialty occupation.

<sup>6</sup> In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

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.

We will now address the position evaluation from Professor [REDACTED] of [REDACTED]. In the letter, Professor [REDACTED] states that a bachelor's degree in finance, statistics, or mathematics is the minimum educational requirement for the proffered position. We reviewed the opinion letter in its entirety. However, as discussed below, the letter from Professor [REDACTED] does not persuade us that the proffered position is a specialty occupation.

Based upon a complete review of Professor [REDACTED]'s letter, we find that he has failed to provide sufficient information regarding the basis of his expertise on this particular issue. While Professor [REDACTED] states in his letter that he is a professor in the Department of Applied Mathematics and Statistics at [REDACTED] and has 21 years of professional experience in the field of statistics, he has not established his expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how his education, training, skills or experience would translate to any particular knowledge of the current recruiting and hiring practices of insurance agencies and brokerages (as designated by the petitioner with the NAICS code) or similar organizations for underwriter positions.

Further, there is no indication that Professor [REDACTED] possesses any knowledge of the petitioner's proffered position beyond the descriptions provided. He does not discuss the duties of the proffered position in any substantive detail. He does not demonstrate or assert in-depth knowledge of the specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that Professor [REDACTED] has 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.

Professor [REDACTED] appears to assert a general industry educational standard for underwriter positions without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. He does not relate his conclusion to specific, concrete aspects of the petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion.

Furthermore, there is no indication that the petitioner advised Professor [REDACTED] that the petitioner characterized the proffered position as a low, entry-level underwriter position for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. It appears that Professor [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that Professor [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by Professor [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by Professor [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record. As such, neither Professor [REDACTED]'s findings nor his ultimate conclusions are worthy of any deference, and his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

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

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

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

Also, there are no submissions from professional associations 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.

The vacancy announcements provided are for positions entitled Underwriter, P&C Underwriter, Commercial Property Underwriter, Commercial Property/Casualty Underwriter/Broker, Commercial Insurance Underwriter, Commercial Lines Underwriter, and similar job titles. The petitioner's reliance upon those job vacancy advertisements is misplaced.

Many of the vacancy announcements provided state that the positions they announce require a bachelor's degree, but not that the degree must be in any specific specialty. As such, they are not persuasive evidence that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Most of the vacancy announcements state an experience requirement. Some require a considerable amount of very specific experience. However, as was stated above, the petitioner designated the proffered position a wage Level I position, that is, an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). As such, those vacancy announcements requiring prior experience as an underwriter do not appear to be for positions parallel to the proffered position, and are not persuasive evidence in satisfaction of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Finally, even if all of the vacancy announcements were for positions parallel to the proffered position and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from those vacancy announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>7</sup>

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

<sup>7</sup> USCIS "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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

While the petitioner submitted various documents such as copies of its agency agreements, appraisal reports, and a list of courses related to the proffered position, it did not adequately explain how the evidence relates to the beneficiary's day-to-day responsibilities and how those documents demonstrate that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate (or higher degree) in a specific specialty, or its equivalent. We note, it is not the volume of documentation that establishes eligibility for the benefit sought, but rather the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence. Upon review, we find that the petitioner has not developed or established complexity or uniqueness as attributes of the proffered position that would require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Insurance Underwriters" at a Level I (entry level) wage. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the duties of the petitioner's proffered position are complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>8</sup>

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

<sup>8</sup> For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who currently or in the past served in the position. In addition, the petitioner may submit any other documentation it considers relevant to this criterion of the regulations.

To merit approval of the petition under this criterion, 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 performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show 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 as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: 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 a 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.* at 388.

The petitioner asserts that it employs or has employed [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as underwriters. The petitioner also states that [REDACTED] and [REDACTED] have master's degrees in business administration and juris doctorates, and [REDACTED] and [REDACTED] have master's degrees in Actuarial Science.

The petitioner did not, however, indicate that the four employees identified are the only underwriters it has employed. Thus, even if those four employees each had a minimum of a bachelor's degree in a specific specialty or its equivalent, that would not be persuasive evidence that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Further, neither a master's degree in business administration nor a juris doctorate has been demonstrated to be a degree in a specific specialty closely related to insurance underwriting. Thus, of the four employees listed, two do not appear to have a minimum of a bachelor's degree in a specific specialty closely related to insurance underwriting, or its equivalent.

For these reasons, the evidence submitted does not demonstrate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

The duties of the proffered position contain insufficient indication of a nature so specialized and complex they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. As subsequently explained in response to the RFE, those same duties require considerable statistical manipulation, but whether it can only be accomplished by a person with an in-depth knowledge of statistics, or is accomplished by entering values into a computer or calculator, or requires some intermediate degree of knowledge of mathematics and statistics, is unclear.

Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they

are more specialized and complex than the duties of underwriter positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

Upon review of the record of proceeding, we find that the petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

### III. CONCLUSION

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.