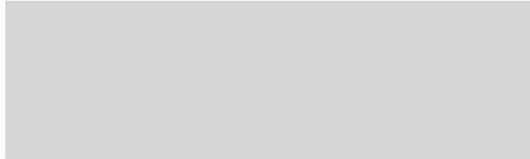


(b)(6)

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 28 2015**

PETITION RECEIPT #: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 45-employee "Telecommunication" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as "Financial Analyst" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the RFE. The Director reviewed the information and determined that the petitioner did not establish eligibility for the benefit sought. The Director denied the petition, finding that the evidence did not establish that the beneficiary is qualified to "perform the services of the specialty occupation." On appeal, the petitioner asserted that the Director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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; (2) the service center's RFE; (3) the petitioner's response to the RFE; (4) the Director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and the petitioner's submissions on appeal. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

As will be discussed below, we have determined that the Director did not err in her decision to deny the petition on the beneficiary qualifications issue. Accordingly, the Director's decision will not be disturbed. Beyond the decision of the Director, we also find that the evidence does not establish that the proffered position qualifies for classification as a specialty occupation. The appeal will be dismissed, and the petition will be denied.

## II. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Financial Analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2051, Financial Analysts, from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

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

The petitioner submitted a letter, dated April 15, 2014, from [REDACTED] signing as the petitioner's president. That letter contains the following description of the duties of the proffered position:

| <u>DESCRIPTION</u>   | <u>TIME%</u> |
|--|--------------|
| Analyzing procedures to devise most efficient methods of accomplishing company goals; Studying financial planning, organizational change & cost analysis of the organization; Consulting with management to determine its assets, liabilities, cash flow, insurance coverage, tax status, and financial objectives | 35%          |
| Gathering and organizing information on problems or procedures including present operating procedures; Analyzing data gathered, developing information and proposing available solutions or alternate methods of proceedings to management.  | 25%          |
| Organizing and documenting findings of studies and recommend to the management on implementation of new systems, procedural changes, and company goals; Analyzing financial status of the company and developing financial plans based on analysis of data, and discussing financial options with the management.  | 25%          |
| Interacting with other managers and executives to assure smooth functioning of newly implemented systems and procedures.   | 10%          |

***35% -- Analyzing procedures to devise most efficient methods of accomplishing company goals; Studying financial planning, organizational change & cost analysis of the organization; Consulting with management to determine its assets, liabilities, cash flow, insurance coverage, tax status, and financial objectives***

Create financial plans and forecasts for the company. Create and manage P&L, balance sheet, and cash flow models with regular updates with different scenarios and assumptions. Manage store payroll plans. Work with field management to ensure compliance with prescribed targets. Comply with due diligence requests related to lenders and other financial stakeholders. Create detailed annual financial plan for retail stores. Create and manage store-level sales plans and incentive requirements. Establish and implement policies, goals, objectives, and procedures for the financial operations.

***25% -- Gathering and organizing information on problems or procedures including present operating procedures; Analyzing data gathered, developing information and proposing available solutions or alternate methods of proceedings to management.***

Gather information, assemble spreadsheets, write reports, and review all non-legal pertinent information about prospective deals. They examine the feasibility of a deal

and prepare a plan of action based on financial analysis. Analyze financial results and identify areas for improvement. Work with information technology group to improve system-reporting abilities, and help ensure the capabilities of the company new retail system are maximized. Manage one direct report.

**25% -- Organizing and documenting findings of studies and recommend to the management on implementation of new systems, procedural changes, and company goals; Analyzing financial status of the company and developing financial plans based on analysis of data, and discussing financial options with the management.**

Prepare plans of action for investment based on financial analyses and Company's needs. Implement strategy and tactics. Planning, organizing, directing, controlling and evaluating the operations of financial operations. Development and Implementation of financial policies and systems. Establishment of performance standards. Preparation of various financial reports for senior managers. Come up with investment strategies to meet their financial goals. Provide financial forecasts and prepare budgets. Make recommendations on investments and investment timing.

**10%<sup>2</sup> -- Interacting with other managers and executives to assure smooth functioning of newly implemented systems and procedures.**

Analyze financials/statistics for benchmarking performance; create and update reports useful to management. Meet with company officials to gain a better insight into the company's prospects and to determine its managerial effectiveness.

also stated:

It is apparent that a Financial Analyst with the specific duties listed above, would be considered a professional position and would normally be filled by a graduate with a minimum of a Bachelor's Degree in Business Administration or a related area, or the equivalent.

Subsequently, Mr. [REDACTED] stated that the proffered position requires, "a Bachelor's degree in Business Administration, Finance, or a related field."

<sup>2</sup> We observe that the sum of the percentages of time attributed to the various duties of the proffered position does not equal 100%.

### III. SPECIALTY OCCUPATION

USCIS is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). Therefore, we will first address the issue of 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 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

As a preliminary matter, the petitioner's claim that a bachelor's degree in business administration 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. There must be a close correlation between the required specialized studies and the position; thus, the requirement of a degree with a generalized title such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, 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. USCIS has consistently stated that, 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).

The petitioner asserts that a bachelor's degree in business administration, without further requiring that that degree be in any specific specialty, is sufficient for entry into the proffered position. Without more, the petitioner's statement alone indicates that the proffered position is not, in fact, a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will discuss the record of proceeding in relation to the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first discuss the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's *Occupational Outlook Handbook (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>3</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-2051, Financial Analysts, from O\*NET. We reviewed the chapter of the *Handbook* entitled "Financial Analysts," including the sections regarding the typical

<sup>3</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.

duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of financial analysts:

### **What Financial Analysts Do**

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

### **Duties**

Financial analysts typically do the following:

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

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

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

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

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

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or

the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

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

The following are examples of types of financial analysts:

**Portfolio managers** supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not only are responsible for the overall portfolio, but also are expected to explain investment decisions and strategies in meetings with investors.

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last visited May 14, 2015).

Some of the duties attributed to the proffered position in [REDACTED] April 15, 2014 letter have not been shown to actually be related to a financial analyst position in the petitioner's operations. In a letter dated April 15, 2014, the petitioner describes itself as "primarily in the business of providing quality India phone cards and calling cards online." The record contains insufficient evidence that the beneficiary, in the proffered position within the context of the petitioner's operations, a small firm selling telephone calling cards, would perform the claimed duties of the proffered position. For example, the petitioner stated that the beneficiary would be involved in "[p]lanning, organizing, directing, controlling and evaluating the operations of financial operations"; however, while the evidence includes copies of invoices, a payroll summary, Form W-2s, and the petitioner's 2013 1120S, U.S. Income Tax Return for an S Corporation, there are insufficient details in the record of the financial operations of the petitioner and what is required for "[p]lanning, organizing, directing,

controlling and evaluating" it.<sup>4</sup> The duties described have not been demonstrated to be duties that would be performed by a financial analyst in the context of the petitioner's operations. As such, the substantive nature of the work the beneficiary would actually perform if the visa petition were approved has not been demonstrated.

The evidence does not establish the substantive nature of the work to be performed by the beneficiary which precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. However, in order to reach the petitioner's assertions pertinent to financial analyst positions, we will continue our analysis based on the assumption, made *arguendo*, that the proffered position is a financial analyst position.

The *Handbook* states the following about the educational requirements of financial analyst positions:

### **How to Become a Financial Analyst**

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

### **Education**

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

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

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial analyst

<sup>4</sup> It is noted that a review of the 2013 Form W-2s for 37 employees reveals that 14 employees received less than \$2000, 14 employees received between \$2000 and \$3000, 4 employees received between \$3100 and \$6155, and the remaining employees received \$15,326.66, \$16,666.66, \$52,575, \$62,728, and \$63,715.44. There is no explanation in the record for why 32 of the 37 employees received less than \$10,000 in wages in 2013.

positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job.

Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst (CFA) certification from the CFA Institute, which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

### **Advancement**

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

### **Important Qualities**

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

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

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

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

**Detail oriented.** Financial analysts must pay attention to details when reviewing possible investments, as small issues may have large implications for the health of an investment.

**Math skills.** Financial analysts use mathematical skills when estimating the value of financial securities.

To be successful, financial analysts must be motivated to seek out obscure information that may be important to the investment. Many work independently and must have self-confidence in their judgment.

*Id.* at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited May 14, 2015).

When reviewing the *Handbook*, we must note again that the petitioner designated the wage level of the proffered position as a Level I position on the LCA. 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 carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that [he/she] would be closely supervised; that [his/her] work would be closely monitored and reviewed for accuracy; and that [he/she] would receive specific instructions on required tasks and expected results.<sup>5</sup> Furthermore, DOL guidance indicates that a Level I designation is appropriate for a position as a research fellow, a worker in training, or an intern.

We note that the *Handbook* indicates that a bachelor's degree is the typical entry-level requirement for financial analysts; however, it does not indicate that a degree in a *specific specialty* is normally the minimum requirement for entry into these positions. The *Handbook* reports that a "number of fields of study provide appropriate preparation" such as "accounting, economics, finance, statistics, mathematics, and engineering." While we recognize that statistics and mathematics are related fields of study, there is insufficient evidence in the record establishing that accounting, economics, finance, statistics, mathematics, *and* engineering, constitute a specific specialty.

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, a minimum entry requirement of a degree in disparate fields, such as accounting 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).

Furthermore, the *Handbook* indicates that some employers require a master's degree in business administration. Although a general-purpose bachelor's or master's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, the acceptance of 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

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<sup>5</sup> 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).

Cir. 2007).<sup>6</sup> Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's or higher degree *in a specific specialty* is not normally the minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that entry into the financial analyst occupation does not normally require a baccalaureate or higher degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here (an entry-level position in comparison to others within the occupation), would normally have such a minimum, specialty degree requirement or its equivalent.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

We note that the petitioner has provided printouts from various websites and the O\*NET financial analyst summary report. The printouts from [REDACTED] have not been demonstrated to be authoritative and do not cite any sources for their conclusions. More to the point, though, the content from [REDACTED] indicate that an otherwise unspecified bachelor's degree in business administration may be a sufficient educational qualification for a financial analyst position.

As was explained above, an educational requirement that may be satisfied by either a bachelor's or a master's degree in business administration, without further specification, is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Two of the three printouts

<sup>6</sup> 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 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.

the petitioner relies upon make clear that a financial analyst position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. They indicate, therefore, that a financial analyst position may not qualify as a specialty occupation position. The petitioner did not attempt to reconcile the information in those two printouts with the information in the [REDACTED] website, nor did the petitioner assert that the [REDACTED] information should be considered more persuasive than the information from the other two websites. As such, the website printouts, considered together, do not support the proposition that the proffered position, even if it were found to be a financial analyst position, would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The O\*NET summary report also does not support the petitioner's position. As was observed above, O\*NET places financial analyst positions in Job Zone Four, which indicates that it is included among occupations of which most, but not all, require a bachelor's degree.<sup>7</sup> Further, it does not indicate that the degrees that may be required by some Job Zone Four positions must necessarily be in any specific specialty. O\*NET does not, therefore, support the proposition that financial analyst positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, even if the proffered position were found to be a financial analyst position, O\*NET would not support the position that it is a specialty occupation position.

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of finance, bookkeeping, and other fields, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge. Even if the petitioner's description of the duties of the proffered position were found to be accurate, it would not demonstrate that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

In the instant matter, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position 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 did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record regarding 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.

<sup>7</sup> For an explanation of Job Zones, see <http://www.onetonline.org/help/online/zones>.

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* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

As was noted above, the petitioner did provide 16 vacancy announcements.<sup>8</sup> Those vacancy announcements are for positions entitled, "Financial Analyst," "Senior Financial Analyst," "Lead Financial Analyst IT and Labs," "Sr Analyst Financial Systems," "Financial Planning & Reporting Analyst," "Finance Analyst," and "Senior Financial Analyst (Revenue Modeling)."

We observe, first, that the petitioner has not demonstrated that the proffered position is a financial analyst position. As such, the educational requirements stated in those vacancy announcements have not been shown to be relevant to the educational requirements of the proffered position. However, we continue our discussion of those vacancy announcements based on the *arguendo* assumption discussed above.

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<sup>8</sup> Although the size of the relevant study population is unknown, the evidence does not demonstrate what statistically valid inferences, if any, can be drawn from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position requires a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The petitioner stated, on the LCA, that the proffered position is a wage Level I position, that is, an entry-level position for an employee who has only basic understanding of the occupation.<sup>9</sup> In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other wage Level I positions require such a specialized degree.

Some of the vacancy announcements provided, however, are for positions described as "Senior" and "Lead." Those positions are unlikely to be wage Level I positions. Further, most of the vacancy announcements state an experience requirement, and some require a considerable amount of very specific experience. The positions they announce also appear not to be wage Level I positions. The vacancy announcements that have not been shown to pertain to wage Level I positions have not been shown to have any direct relevance to any material issue in this matter.

Some of the vacancy announcements indicate that the required or preferred education for the positions they announce is a degree in business administration which, as was explained above, is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Some of the vacancy announcements state a requirement of a bachelor's degree "or equivalent experience," but do not identify the type and amount of experience the hiring authority would consider to be equivalent to the otherwise requisite bachelor's degree.

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions 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).

The 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." To begin with and as discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty, or its equivalent. In addition, the record does not credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Furthermore, the record does not sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of financial analyst.

Specifically, even though the petitioner claims that the proffered position's duties are so complex and unique that a bachelor's degree is required, the petitioner does not demonstrate how the described duties require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study

<sup>9</sup> 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.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) for an explanation of wage levels.

leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While a few courses in business and finance may be beneficial in performing certain duties of a financial analyst position, the petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other financial analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for financial analyst 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 financial analyst or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner does not demonstrate how the proffered position of financial analyst is so complex or unique relative to other financial analyst positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).<sup>10</sup>

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

In his April 15, 2014 letter, [REDACTED] stated that the proffered position requires a bachelor's degree, but that a bachelor's degree in business administration, without further specification, would satisfy the petitioner's educational requirement. In an August 5, 2014 letter, counsel asserted that the petitioner has "multiple" financial analysts and has always filled its financial analyst positions with applicants with a bachelor's degree in business administration or a closely related subject. We observe, first, that the petitioner provided no documentary evidence to corroborate that it presently employs or has previously employed financial analysts or, if it has, that they have each had a minimum of a bachelor's degree, let alone a bachelor's degree in a specific specialty.

While a petitioner may assert that a proffered position requires a degree in a specific specialty, 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 employer artificially created a token degree requirement,

<sup>10</sup> Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a wage Level I position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of such positions. Even if the proffered position were found to be a financial analyst position, this would not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some financial analyst positions do not require such a degree.

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 degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Further, although the petitioner has steadfastly asserted that the proffered position requires a bachelor's degree, it has just as consistently indicated that the requisite degree may be in business administration, without further specification. As was explained above, that is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

For both reasons, the petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than financial analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.<sup>11</sup>

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

<sup>11</sup> Even assuming that the proffered position is a financial analyst position, the duties as described lack sufficient specificity to distinguish the proffered position from other financial analyst positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it 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). Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level III or Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

#### IV. BENEFICIARY QUALIFICATIONS

##### A. The Law

As was noted above, section 214(i)(1) of the Act 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 degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *Cf. Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558,560 (Comm'r 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on

Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;<sup>12</sup>
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience . . . .

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;<sup>13</sup>
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

<sup>12</sup> The petitioner should note that, in accordance with this provision, we will accept a credential evaluation service's evaluation of *education only*, not training and/or work experience.

<sup>13</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of recognition of expertise in the specialty occupation.

#### B. Evidence Pertinent to the Beneficiary's Qualifications

With the visa petition, the petitioner submitted evidence that the beneficiary received a three-year bachelor of commerce degree in financial accounting and auditing from [REDACTED] in India. The petitioner also submitted evidence pertinent to the beneficiary's work experience.

The evidence pertinent to the beneficiary's employment history includes three letters from [REDACTED] India. The first (undated) letter which was submitted with the Form I-129 states that the beneficiary worked as an "Accountant of Auditing" with that company from May 1, 2004 to June 11, 2007<sup>14</sup> and that he performed the following duties:

1. Prepare financial statements and reports for clients of company management.
2. Record the amount and money spend and received daily by clients or company management.
3. Ensure compliance with relevant legislation[.]
4. Analyze how well a business is performing financially[.]
5. Assist management with strategic planning and human resources.

The second (undated) letter which was submitted in response to the RFE is similar to the previous employment verification letter, but does not contain the duty description.

The third employment verification letter from [REDACTED] dated September 26, 2014, is similar to the previous letters, except that it is on different letterhead and contains the following expanded description of the duties performed by the beneficiary in that position:

<sup>14</sup> The employment verification letter states that the beneficiary was employed with [REDACTED] from 1.5.2004 to 11.6.2007. In a letter dated August 5, 2014, counsel confirmed that the beneficiary had worked in that position from May 1, 2014 to June 11, 2007.

**Financial Records:**

- He prepared and examined quarterly and annual financial statements and records of the Company.
- Ensured that they were accurate and that taxes are paid properly and on time.
- He was also responsible for budgeting, performance evaluation, cost management, and asset management.
- Prepared asset, liability, and capital account entries.
- Documented financial account transactions.
- Recommended financial actions.
- Summarized current financial status and presents results.
- Ensure that statements and records comply with laws and regulations

**Accounting & Auditing:**

- Substantiated financial transactions by auditing documents.
- Maintained accounting controls by preparing and recommending policies and procedures.
- Reconciled financial discrepancies.
- Verified documentation, prepares payments, and requests disbursements.
- Ensured compliance with federal state and local financial legal requirements.
- Prepared special financial reports.
- He assisted with annual interim audit & external audit.
- He assessed whether the level of internal control for financial reporting within an organization is adequate to lower or eliminate the risk of accounting errors or fraud.
- His responsibility was to auditing financial data by making a comparison of income and expenses and the balance in asset and liability accounts from month to month, based on the financial statements.
- He played an active role in the monthly account analysis like Prepaid Expenses, Deposits, Accrued Expenses, Investments, Capital Leases, Members Equity, Inter-company balances, Journal Entries including maintenance of recurring journal entries and allocations.
- He compiled and sorted documents such as: invoices, work orders, checks, vouchers, and substantiates business transactions.

**Financial Operation:**

- He worked to establish goals and objectives for each year and monitor and advise on the progress to enhance the professional development of staff.
- He prepared daily reports to assess financial operations and worked to ensure that organization runs efficiently.
- Improved business efficiency where money is concerned.
- Made best-practices recommendations to management.

- o Suggested ways to reduce costs, enhance revenues and improve profits.

[Verbatim.]

An evaluation in the record, prepared by [REDACTED] dated March 29, 2010, states that the beneficiary's three years of academic coursework and examinations at the [REDACTED] and his employment experience, considered together, are equivalent to a U.S. bachelor's degree in business administration. Mr. [REDACTED] states that "[b]ecause of the positions [he holds] at the [REDACTED] and the [REDACTED] [he has] the authority to grant college-level credit for training, and/or courses taken at other U.S. or international universities."<sup>15</sup>

A letter from Dr. [REDACTED] dated January 10, 2007, indicates that on the date of that letter, [REDACTED] who provided the evaluation of the beneficiary's qualifications, was a professor and area chair at the [REDACTED]. It states:

The [REDACTED] has a program which acknowledges credit based upon the work experience of students and applicants; this Prior Learning Assessment process determines if learning received outside of the traditional university classroom is equivalent to academic curriculum and eligible for college credit through the evaluation of a student's portfolio.

It further states:

Included within Professor [REDACTED] capacity as an Area Chair and a Faculty, are the review of credentials of existing and prospective faculty and the evaluation of students in the fields of Business Administration, Marketing, Management Information Systems, Computer Science and other related areas. As part of these capacities Professor [REDACTED] has proven to be a reliable evaluator and has consistently delivered appropriate evaluations for credit-bearing purposes.

A letter from Dr. [REDACTED] dated March 12, 2010 letter states:

This letter confirms that Professor [REDACTED] a full-time faculty member in the BBA Program in Design and Management at [REDACTED] reviews the academic and professional credentials of prospective international students and faculty who apply for admission and employment, respectively, at [REDACTED]. Specifically, Professor [REDACTED] reviews credentials in the fields of Business, Economics, Computer Information Systems, Management, Information Systems, and other related areas. He also evaluates work experience in order to

<sup>15</sup> The evaluation contains a notation that Mr. [REDACTED] is also a Visiting Assistant Professor in the Department of Design and Management, [REDACTED] for Design.

determine academic equivalence, for the purpose of awarding appropriate transfer credit.

A more recent letter regarding Professor [REDACTED] is from [REDACTED] and dated February 19, 2014. That letter states, in pertinent part:

This letter is to confirm that Professor [REDACTED] is the Director of the graduate program MS Strategic Design and Management at [REDACTED] for Design. As such, he reviews the academic credentials of prospective applicants, transfer students, and prospective faculty. He frequently deals with international credentials and is relied upon to determine the academic equivalency of degrees and transcripts from educational systems outside the United States.

Additionally, because of his academic and professional background he reviews work experience in the fields of Business, Management Information Systems, Economics, Computer Information Systems, Accounting, Management, and other related areas for the purpose of awarding relevant credits and graduate admission. Professor [REDACTED] is experienced in evaluating relevant work experience in order to determine their academic equivalence, and to authorize that credit be awarded by [REDACTED] when appropriate. [REDACTED] has divisions that allow for credit to be awarded based on experience.

The petitioner also submitted several Internet printouts. One of the printouts provided was taken from the [REDACTED] website. It states, *inter alia*, that in applying for Federal jobs, nine months of experience is considered equivalent to a year of academic study.<sup>16</sup>

Another printout is from the website of [REDACTED] Virginia. It states that, in applying for a job with that county's government, one year of employment experience is considered equivalent to one year of academic study.

### C. Analysis

As was observed above, the petitioner relies on the beneficiary's 3-year bachelor's degree and the beneficiary's employment experience, considered together, as the basis for its contention that the beneficiary is qualified to perform the duties of a specialty occupation.

We observe that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's

<sup>16</sup> We note that the [REDACTED] printout does not state a source for that asserted equivalence. Further, it makes that claim pertinent to qualifications for Federal employment, not specialty occupation positions pursuant to the statutes and regulations applicable to H-1B status.

degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968).

evaluation states that the beneficiary's three-year degree and his employment experience, considered together, are equivalent to a U.S. bachelor's degree in business administration. As explained above, however, an otherwise unspecified bachelor's degree in business administration is not a degree in a specific specialty. That evaluation does not, therefore, state that the beneficiary has a minimum of a bachelor's degree in any specific specialty or its equivalent, and does not demonstrate, nor even effectively allege, that the beneficiary is qualified to work in any specialty occupation position.<sup>17</sup>

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree in a specific specialty, or its equivalent, and has not, therefore, been shown to qualify as a position in a specialty occupation.

Because the finding that the petitioner did not demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, we need not further address the issue of the beneficiary's qualifications.

## V. CONCLUSION

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 we 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 our enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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

<sup>17</sup> We also observe that, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), set out above, in order to satisfy evidentiary requirements an evaluation of education and experience, considered together, must be performed by an evaluator with authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university. The evidence in the instant case does not show that [redacted] has such authority. As such, even if the evaluation provided had asserted that the beneficiary's education and experience, considered together, are equivalent to a minimum of a bachelor's degree in a specific specialty, it would not be competent evidence of that assertion pursuant to the salient regulations.

(b)(6)



*NON-PRECEDENT DECISION*

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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.