



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF CJF-, INC.

DATE: OCT. 16, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a “Food Manufacturing, Bakery” firm, seeks to employ the Beneficiary as a part-time “Business Developer” and to classify him as a nonimmigrant worker in a specialty occupation. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director found the evidence insufficient to establish that the proffered position qualifies for classification as a specialty occupation position. On appeal, the Petitioner asserts that the Director’s basis for denial was erroneous and contends that the Petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the Petitioner’s Form I-129 and the supporting documentation filed with it; (2) the Director’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, Notice of Appeal or Motion, and the Petitioner’s submissions on appeal. We reviewed the record in its entirety before issuing our decision.¹

I. THE PROFFERED POSITION

The Petitioner claims in the Labor Condition Application (LCA) submitted to support the visa petition that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 11-2021, Marketing Managers, from the Occupational Information Network (O*NET).

In a letter submitted with the visa petition dated October 14, 2014, the Petitioner provided a chart, provided below, verbatim, listing the duties and responsibilities of the proffered position as well as the hours and percentages of time to be spent on each duty.

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

Duties/Responsibilities	Hours Spent on Duty Each Week	% of Time on Duty Each Week
Formulate marketing activities and policies as well as the evaluation of product development including but not limited to budget and research and development. Create strong trusting relationships with business owners and sales consultants by making regular weekly contact with business owners; gain an understanding of each business in the area and the market surrounding them; be involved in each of the businesses and be available as a point of contact for them.	8 hours	40%
Provide coaching for business owners and sales consultants to ensure that they operate according to company policy by planning sessions and training to business owners and sales consultants as required; help interpret and understand financial and productivity reports.	6 hours	30%
Help business owners develop strategies to grow their business by reviewing plans and assisting with recruitment and marketing events	5 hours	25%
Keep abreast with market and trends. Be an active contributor to [the Petitioner] by providing regular reports to the USA CEO and attend annual conferences, business owners meetings, award dinners, etc.	1 hour	5%

As to the educational requirements of the proffered position, the Petitioner stated that it requires “at least a Master’s degree in Business or related field.”

II. SPECIALTY OCCUPATION

The issue is whether the evidence of record establishes that the Petitioner will employ the Beneficiary in a specialty occupation position.

A. Legal Framework

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

The Petitioner asserts that a master's degree in business is sufficient for entry into the proffered position, without further requiring that the degree be in any specific specialty within that general field. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. 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).

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

We will first discuss the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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. As noted above, the Petitioner claimed in the LCA that the proffered position corresponds to SOC code and title 11-2021, Marketing Managers, from O*NET.

We recognize the U.S. Department of Labor's (DOL) *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.² In the chapter pertinent to Advertising, Promotions, and Marketing Managers, the *Handbook* states, in pertinent part, the following with regard to the educational requirements of such positions:

A bachelor's degree is required for most advertising, promotions, and marketing management positions. For advertising management positions, some employers prefer a bachelor's degree in advertising or journalism. A relevant course of study might include classes in marketing, consumer behavior, market research, sales, communication methods and technology, visual arts, art history, and photography.

² 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.

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U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2014-15 ed., "Advertising, Promotions, and Marketing Managers," <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-4> (last visited Oct. 15, 2015).

More specifically, as to marketing managers, the *Handbook* states:

Most marketing managers have a bachelor's degree. Courses in business law, management, economics, finance, computer science, mathematics, and statistics are advantageous. For example, courses in computer science are helpful in developing an approach to maximize traffic through online search results, which is critical for digital advertisements and promotions. In addition, completing an internship while in school is highly recommended.

Id.

While the *Handbook* indicates that most marketing managers have a bachelor's degree, it does not state that a bachelor's degree is a minimum requirement. Further, it does not indicate that marketing manager positions require a minimum of a bachelor's degree or the equivalent *in a specific specialty*. That courses in business law, management, economics, finance, computer science, mathematics, and statistics are advantageous does not indicate that such positions require a bachelor's degree in a specific subject, or even any bachelor's degree at all.

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 have reviewed the evaluation of the proffered position prepared by [REDACTED] a professor of marketing at [REDACTED]. [REDACTED] stated that, based on the duty description provided by the Petitioner, "[A]t least a Bachelor's Degree (or foreign equivalent) in Business Administration, Management, Marketing, or a related field, MBA preferred, is required to perform the responsibilities of [the proffered position]."

Although [REDACTED] indicated that he based his opinion on the duty description provided by the Petitioner, he did not discuss the duties of the proffered position in any substantive detail. Further, while he noted that the Petitioner is a subsidiary of [REDACTED] and listed other holdings of [REDACTED] he did not demonstrate or assert in-depth knowledge of the specific business

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operations of the Petitioner itself 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 [REDACTED] 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.

[REDACTED] asserted a general industry educational standard for business developer positions without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he did not provide a substantive, analytical basis for his conclusion. He did 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 [REDACTED] that the Petitioner characterized the proffered position as a low, entry-level marketing manager 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.³ It appears that [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [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.

³ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described 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.

Thus, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is 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 exercise of judgement.

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In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] does not establish that the proffered position qualifies as a specialty occupation. The conclusion reached by [REDACTED] is 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. We may, in our discretion, use as advisory opinions 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 find that the professor's opinion letter does not satisfy any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).⁴ 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.

The *Handbook* does not support the claim that the occupational category of marketing managers is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level marketing manager position (as indicated on the LCA), would normally have such a minimum, specialty degree requirement or its equivalent. 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).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

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: (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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the

⁴ In any event, [REDACTED] conclusion does not support the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, [REDACTED] stated that the proffered position requires "at least a Bachelor's Degree (or foreign equivalent) in Business Administration, Management, Marketing, or a related field," and that an MBA would be preferred for the position. That conclusion does not assert that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. As was explained above, a requirement of a degree in business administration, with no further specificity, is not a requirement of a bachelor's degree *in a specific specialty*.

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."

Instead, the Petitioner provided a letter from the regional manager of a restaurant chain. That letter states: "[W]e require a Business Developer to have at least a Bachelor's Degree with a preference for a Master's Degree." Even if the restaurant chain were considered to be in the same industry as the Petitioner, a self-described "Food Manufacturing, Bakery" firm, that restaurant's letter would not demonstrate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. First, it represents, at most, the policy of one company, rather than a consensus that a requirement of a minimum of a bachelor's degree in a specific specialty, or its equivalent, is common in the industry. Further, the letter does not indicate that the company has a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent for such positions.

The vacancy announcements also do not show that similar companies in the Petitioner's industry commonly require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for positions similar to the position proffered in the instant case.

First, most of the vacancy announcements appear to be for positions clearly not in the Petitioner's industry. Although one of the vacancy announcements was placed by a food and beverage manufacturer, others were placed by a pharmaceutical research service, a computer hardware firm, a musical instrument and audio equipment manufacturer, a retirement community, an internet insurance broker, and a health care management company. The industries of some of the organizations that placed those vacancy announcements were not specified.

Further, the job offered by the pharmaceutical research service is based in India, with travel to the United States as needed. Section 214(i)(1) of the Act, makes explicit that it is concerned with the requirements for entry into positions in the United States. The requirements for positions in India are not directly relevant to that inquiry.

Further still, although each of the vacancy announcements contains a brief duty description, most are insufficient to show that the position offered is similar to the position proffered in the instant case.

Yet further, some of the vacancy announcements state a requirement of a bachelor's degree, but not that the degree must be in any specific specialty. Some indicate that a degree in business administration would be a sufficient qualification for the positions they announce. As was explained above, a requirement of a degree in business administration, absent any additional specification, is not a requirement of a degree in a specific specialty. One vacancy announcement states that a degree is preferred, rather than required.

Additionally, most of the vacancy announcements state an experience requirement, whereas the proffered position is an entry-level position. As those positions do not appear to be entry-level positions, they do not appear to be positions similar to the proffered position.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the Petitioner and in the Petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from such a limited number of announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.

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).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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." A review of the record of proceeding indicates that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Even when considering the Petitioner's general descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the 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 proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex

or unique from other positions that can be performed by persons without 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. As noted above, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I. Such a wage level only requires a basic understanding of the occupation and does not require the performance of complex duties.⁵

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 evidence of record does not 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, 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 employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

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 a letter dated January 15, 2015, submitted in response to the RFE, counsel for the Petitioner indicated that the Petitioner has never previously employed anyone in the proffered position. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

⁵ The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

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We observe, however, that the Petitioner provided its job advertisement printed in [REDACTED] newspaper for the week of December 12–18, 2014. It states that the proffered position requires, “MBA in Business or Related.”

As was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor’s degree in a specific specialty or its equivalent. *See Matter of Michael Hertz Assocs., supra.* The Petitioner’s own evidence does not suggest that it requires a minimum of a bachelor’s degree *in a specific specialty* or its equivalent for the proffered position. The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 in a specific specialty, or its equivalent

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the evidence of record 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. In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. We again refer to 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) wage. That is, the 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. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is 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.

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

The Petitioner has not 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. ADDITIONAL ARGUMENTS ON APPEAL

The Petitioner asserts on appeal that the instant petition should be accorded deference because it is an extension petition. The instant record, however, contains little information pertinent to that prior approval. The Petitioner has not demonstrated that the duties of that other position are identical to those of the proffered position and, as was noted above, the approved petition was filed for

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employment by a different company. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be “absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent.” *Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

A prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Tex. A&M Univ. v. Upchurch*, 99 Fed. App'x 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *See La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

The Petitioner further cites various decisions in the brief on appeal. Many of those decisions were rendered by federal district courts. In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719. In any event, it is noted that the Petitioner did not specifically explain how the facts of those cases are so related to the facts of the instant case that the reasoning of those cases should be extended to this case.

IV. 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.

Cite as *Matter of CJF-, Inc.*, ID# 14008 (AAO Oct. 16, 2015)