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

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

MATTER OF S-M- LLC

DATE: APR. 1, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an “Investments/Real Estate” business, seeks to extend the Beneficiary’s temporary employment as a “Manager of Investments/Real Estate” under the H-1B nonimmigrant classification. *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, Vermont Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUES

The Director denied the petition, finding that the evidence of record: (1) did not establish that the proffered position qualifies as a specialty occupation; and (2) did not establish that the Beneficiary is qualified to perform services in a specialty occupation. Beyond the decision of the Director, we will also address whether the Form I-129 was supported by a corresponding labor condition application (LCA) and whether the Form I-129 was properly completed.

II. FACTUAL BACKGROUND

On the Form I-129, the Petitioner indicated that it is a two-employee “Investments/Real Estate” business located in ██████████ Connecticut. The Petitioner seeks to extend the Beneficiary’s employment in a full-time “Manager of Investments/Real Estate” position at an annual salary of \$61,006.

The LCA states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 13-2051, “Financial Analysts,” from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I (entry) position.

In a support letter dated July 18, 2014, the Petitioner described itself as “an international investment company . . . [whose] day to day business dealings include domestic and international investments, real estate negotiations, complex financial transactions, interpretations and evaluations of highly technical international commerce compliance, and constant interaction with international attorneys hired to effectuate all business dealings within the company.” The Petitioner also stated that “in addition to its large portfolio of commercial and residential real estate properties, [it] also is part

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owner of a winery located in Czech Republic . . . and [it] partners in three (3) multinational businesses operating mainly out of the Czech Republic.”

The Petitioner described the proffered position as follows:

As a Manager of Investments/Real Estate, [the Beneficiary] will be responsible for accounting/bookkeeping and staff supervision for projects located in the United States and the Czech Republic. [The Beneficiary] will handle all areas of oversight, review and supervision from the [REDACTED] CT location for both Czech Republic and US projects. The employee will also aid in translating documents and translation services between US and Czech counterparts from the [REDACTED], CT location. [The Beneficiary] will travel with other employees of [the Petitioner] for the annual investor conference in the Czech Republic. [The Beneficiary] will act as property manager and bookkeeper for various properties in [REDACTED] and [REDACTED] Connecticut.

. . . [The Beneficiary] is expected to organize and manage complex international investments, a task [the Beneficiary] is competent to perform because of his political science background. [The Beneficiary] is also expected to manage large portfolios of commercial and residential real estate and partake in the day to day operations of three (3) multinational businesses which operate out of the Czech Republic. [The Beneficiary] is expected to deal daily with international commerce compliance. Such tasks involve the meeting and communicating with various individuals, the reading and analyzing complex documents, the ability to communicate and negotiate various matters, and the proper and accurate interpretation of complex documents, all tasks necessitating a strong background in analysis, logic, negotiations, mediation, critical thinking, problem solving, computer skills, the skills [the Beneficiary] obtained as a result of his baccalaureate degree with a polity science focus.

. . . The position of Manager of Investments/Real Estate requires the theoretical and practical application of highly specialized knowledge, as the incumbent will be called upon to provide expertise with regard to marketing and business analysis. Therefore, the duties of this professional position could only be satisfactorily discharged by an individual having knowledge of financial analysis and economic principles associated with the completion of at least a Bachelor’s degree in Political Science, International Relations, Economics, Finance, Marketing, or a related analytic discipline, or the equivalent thereof. This is a standard requirement within our organization due to our specialized and sophisticated needs and the responsibility vested within this position. Further, the degree requirement is standard to the industry at large.

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The Petitioner also stated that its minimum educational requirement for entry into the proffered position is at least a “Bachelor’s degree in Political Science, International Relations, Economics, Finance, Marketing, or a related analytic discipline, or the equivalent thereof.”

In response to the Director’s request for evidence (RFE), the Petitioner further elaborated upon the duties of the proffered position, as follows:

[The Beneficiary] manages and organizes [the Petitioner’s] portfolio of commercial and residential real estate, creates financial reports, reviews and negotiates contract and insurance proposals, negotiates lease contracts. He develops reports on 3 multinational businesses which operate in the Czech Republic. He manages our investment in [the Petitioner’s] Winery located in the Czech Republic which distributes wine throughout Europe. On behalf of the winery, [the Beneficiary] communicates with the accounting company based in the Czech Republic, translating and interpreting financial statements. [The Beneficiary] manages international commerce compliance on a daily basis. Such tasks involve meetings and communication with various individuals, reading and analyzing complex documents, their proper and accurate interpretation and all tasks which necessitate a strong background in logic, negotiation, mediation, problem solving and computer skills.

The Petitioner also provided the following “Daily Responsibilities”:

[The Petitioner’s] International Investments – 40%

[The Beneficiary] manages all European based investments for [the Petitioner] including our partnership with the [REDACTED] and [the Petitioner’s] Winery. [The Petitioner] has an investment of over 5 Million Euros in these activities. His duties include all areas of analysis, business reporting, and contract negotiation.

[The Petitioner’s] International Business Trips – 15%

The principals of [the Petitioner] travel outside the United States quarterly to our projects in Europe and New Zealand. [The Beneficiary] coordinates these trips and meetings as part of his day to day duties. [The Beneficiary] also travels to Czech Republic twice a year to inspect [the Petitioner’s] investments.

[The Petitioner’s] Domestic Property – [REDACTED] California 15%

Using his expertise gained by advising [the Petitioner] with [the Petitioner’s] Winery, [the Beneficiary] is responsible for the lease and negotiation activities with our 400,000 square foot Wine Processing facility in [REDACTED] California.

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[The Petitioner's] Domestic Properties – Other 20%

[The Petitioner] owns and operates office, retail and land development activities in Connecticut and Colorado. [The Beneficiary] is responsible for the day to day management and reporting on all real estate projects.

[The Petitioner's] Administration – 10%

[The Beneficiary] is responsible for the reporting and administration of [the Petitioner's] global portfolio which includes ownership of a [REDACTED] multiple international private equity investments and a portfolio of domestic publicly traded stocks.

The Petitioner also stated that the proffered position “has a minimum requirement of a Bachelor’s Degree” and that the Beneficiary’s predecessor holds a bachelor’s degree in business administration.

On appeal, the Petitioner distinguishes the proffered position from a property manager position, and asserts that the proffered position is properly classified under the financial analyst occupational classification. The Petitioner also states that the duties of the proffered position “require the minimum of a bachelor’s degree in political science/international relations or equivalent.” The Petitioner further explains why a degree in political science/international relations is “an essential requirement” for the individual performing the “wide range of tasks from several disciplines,” including knowledge of “economics, business climate, and laws and regulations of each state that [the Petitioner] has investments and assets in, notably the Czech Republic.”

III. SPECIALTY OCCUPATION

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. Fed. 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

individuals 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 individual, 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 or 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

Upon review, we find that the evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation.

First, we find that the Petitioner has provided inconsistent information regarding the minimum educational requirements for the proffered position. For instance, the Petitioner initially stated that it requires a "Bachelor's degree in Political Science, International Relations, Economics, Finance, Marketing, or a related analytic discipline." In response to the Director's RFE, the Petitioner stated that it "has a minimum requirement of a Bachelor's Degree," without further specification, and the Beneficiary's predecessor was qualified for the proffered position by virtue of his degree in business administration. The Petitioner now asserts on appeal that it requires a "minimum of a bachelor's degree in political science/international relations or equivalent." No explanation for the variances in educational requirements was provided by the Petitioner. It is thus not clear whether the Petitioner requires: (1) a bachelor's degree in political science, international relations, economics, finance, marketing, or a related field; (2) simply a general bachelor's degree and/or a business administration degree; or (3) a bachelor's degree specifically limited to the fields of political science and/or international relations.

"[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

If it is the Petitioner's claim that bachelor's degrees in political science, international relations, economics, finance, marketing, or a related field, are sufficient minimum requirements for entry into

the proffered position, this claim is inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as political science and marketing, 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.¹ Section 214(i)(1)(B) of the Act (emphasis added).

It is not readily apparent that fields such as political science and marketing are closely related to each other, or that these fields are directly related to the duties and responsibilities of the particular position proffered in this matter. For example, the Petitioner has not sufficiently explained what courses of study are common between degrees in political science and marketing. Nor has the Petitioner specifically explained how a degree in marketing would provide an individual with the knowledge necessary to perform duties such as investment and property management. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree *in a specific specialty*, or its equivalent, under the Petitioner's own standards. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Even if the Petitioner's educational requirement is only a degree in political science and/or international relations, this too is inadequate to establish that the proposed position qualifies as a specialty occupation. The Petitioner has not sufficiently established that a degree in political science and/or international relations is directly related to the duties and responsibilities of the particular position proffered in this matter. That is, the Petitioner has not sufficiently established that a degree in political science and/or international relations would provide an individual with the knowledge necessary to perform financial and economics-related duties reflective of the financial analyst occupational classification chosen here.

¹ In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

For example, the Petitioner asserted that “the duties of this professional position could only be satisfactorily discharged by an individual having knowledge of financial analysis and economic principles.” The Petitioner has consistently emphasized the nature of its business operations dealing with investments, “complex financial transactions” and “highly technical international commerce compliance.” These assertions are consistent with the Department of Labor’s (DOL’s) *Occupational Outlook Handbook (Handbook)*, which states that financial analysts study and evaluate financial data and economic trends, and lists the fields of study that provide “appropriate preparation” for entry into the occupation as including “accounting, economics, finance, statistics, and mathematics.”² See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Financial Analysts,” <http://www.bls.gov/ooh/business-and-financial/print/financial-analysts.htm> (last visited Mar. 8, 2016). However, the Petitioner has not sufficiently explained and documented which courses leading up to an established curriculum in political science and/or international relations would provide such “knowledge of financial analysis and economic principles.” While the Petitioner asserts that a political science degree provides “strong skills” in “statistical data,” the Petitioner has not established that skills in “statistical data” are equivalent to skills and knowledge in “financial analysis and economic principles.”

Alternatively, if it is the Petitioner’s claim that a general bachelor’s degree without further specification, or a bachelor’s degree in business administration, are sufficient for entry into the position, this claim still is inadequate to establish that the proposed position qualifies as a specialty occupation. Again, 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 mere requirement of a general degree, or 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 Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”). 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.³ *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).⁴

² We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/oco/>. All our references to the *Handbook* are to the 2016 – 17 edition available online.

³ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor’s or higher degree in business administration with a concentration in a specific field, or a bachelor’s or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor’s or higher degree 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).

The Petitioner cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) for the proposition that “[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.” The Petitioner thus asserts that “because there is no such thing as a degree that is specifically tailored to fit the job description of the Manager of Investments/Real Estate, [the Petitioner] has indicated that an individual who possesses a Bachelor’s Degree in Political Science/International Relations would possess the suitable training, skills, and knowledge to be able to perform the required job duties.”

The Petitioner’s reliance upon these cases is misplaced. While we agree with the general proposition cited above, we do not agree that it applies to the situation at hand. The issue here is that the Petitioner has not consistently established what its minimum educational requirement is, and how its entry requirement – whether it is a bachelor’s degree in political science, international relations, or marketing, or merely a general degree such as business administration – is directly and closely related to the position in question. As discussed above, the Petitioner has not adequately explained its changing requirements for the proffered position during these proceedings. For these reasons, the petition will be denied and the appeal dismissed.

Second, we find that the evidence of record is insufficient to establish the substantive nature of the proffered position.

The job descriptions lack sufficient detail and concrete explanation to establish the substantive nature of the work that would be performed within the context of the Petitioner’s particular business operations. For instance, the Petitioner stated that 40% of the Beneficiary’s duties “involves the management of all of Petitioner’s European-based investments,” while 20% of his duties include “the day to day management and reporting on all real estate projects.” The Petitioner also stated that the Beneficiary

It is also important to note that a position may not qualify as a specialty occupation based solely on either a preference for certain qualifications for the position or the claimed requirements of a petitioner. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). Instead, the record must establish that the performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”).

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

The 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.

Id.

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will spend 10% of his time on the “reporting and administration” of the Petitioner’s “global portfolio.”⁵ The Petitioner has not sufficiently delineated what specific tasks the Beneficiary will perform (e.g., what is meant by the vague terms “management,” “handle all areas of oversight, review and supervision,” and “reporting and administration”) and the percentages of time spent on each distinct duty (e.g., how the 40% of time spent on “all of the Petitioner’s European-based investments” is further broken down into distinct duties such as property management, financial reporting, and contract negotiation).

Notably, many of the Beneficiary’s job duties include supervisory and managerial duties, including “staff supervision for projects located in the United States and the Czech Republic.” However, the Petitioner has not further explained what “staff” (e.g., their names, titles, and position duties) the Beneficiary will supervise, or what specific “projects” the Beneficiary will manage in the United States and abroad. We note that the Petitioner claimed on the Form I-129 to have only two employees, but has not identified who these two employees are and what their duties are within the company.⁶ The lack of such details regarding the Petitioner’s business operations further precludes an understanding of the substantive nature of the proffered position.

Furthermore, some of the proffered duties are so broadly described that they could reasonably encompass duties that do not involve specialty occupation work at all. To illustrate, the Petitioner stated that the Beneficiary “will be responsible for accounting/bookkeeping.” The Petitioner also stated that the Beneficiary “coordinates” the quarterly international business trips and meetings. However, these duties – as so generally described – could potentially encompass non-qualifying duties, such as routine bookkeeping and administrative duties, which constitute a substantive portion of the proffered duties. While no provision in the law for specialty occupations permits the performance of non-qualifying duties, we will view the performance of duties that are incidental to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature.⁷ Anything beyond such incidental duties, however, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.

⁵ The Director found that the job duties regarding administration and management of the Petitioner’s “global portfolio,” including ownership of a [REDACTED] and part ownership in a winery, constituted a material change in the position. We will withdraw this finding. Although vague, the Petitioner’s initial letter, dated July 18, 2014, did state that the company’s “day to day business dealings include domestic . . . investments.” The Petitioner additionally stated that it “also is part owner of a winery located in the Czech Republic.” The Petitioner then stated that the Beneficiary “will handle all areas of oversight, review and supervision . . . for both Czech Republic and US projects.” Because of the overly broad nature of the Petitioner’s descriptions, we cannot find that the above job duties relating to the “global portfolio” and winery were inconsistent, and thus, we do not find that they constitute material changes.

⁶ It is not apparent whether these two employees include the Beneficiary, who has been working for the Petitioner in H-1B status for several years. We also note that the Petitioner stated in its July 18, 2014, letter that the Beneficiary “will travel with other *employees* of [the Petitioner] (plural emphasized),” therefore implying that the Petitioner has more than two employees.

⁷ The two definitions of “incidental” in *Webster’s New College Dictionary* are “1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature” *Incidental, Webster’s New College Dictionary* (3rd ed. 2008).

Some of the proffered job duties also do not reasonably fall within the scope of duties for the financial analyst occupation chosen here. Neither the *Handbook* nor the DOL's Occupational Information Network (O*NET) indicates that financial analysts perform duties related to accounting, bookkeeping, property management, travel coordination, marketing, and "partak[ing] in the day to day operations of three (3) multinational businesses," for example.⁸ See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/print/financial-analysts.htm> (last visited Mar. 8, 2016); O*NET Online Details Report for "13-2051, Financial Analysts" <http://www.onetonline.org/link/details/13-2051.00> (last visited Mar. 8, 2016).

While the *Handbook* states that portfolio managers, a type of financial analyst, "are responsible for the overall performance of the portfolio," the *Handbook* does not indicate that they actually manage the "day to day operations" of the investments under the portfolio. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/print/financial-analysts.htm> (last visited Mar. 8, 2016). Nor has the Petitioner stated that the Beneficiary actually selects the mix of investments under the company's portfolio, which he will then manage. See *id.* O*NET, similarly contains no references to managerial-type duties for financial analysts. See O*NET Online Details Report for "13-2051, Financial Analysts," <http://www.onetonline.org/link/details/13-2051.00> (last visited Mar. 8, 2016).

Moreover, some of the duties of the proffered position do not appear consistent with the Level I, entry-level, wage rate selected here. Here, the Petitioner has repeatedly emphasized the "complex," "sophisticated," and "specialized" nature of the proffered job duties.⁹ In accordance with the relevant DOL explanatory information on wage levels, however, a Level I wage rate indicates that the proffered position is a comparatively low, entry-level position relative to others within the occupation. It also indicates that the Beneficiary is only required to have a basic understanding of the occupation, and will perform routine tasks that require limited, if any, exercise of judgment.¹⁰

⁸ We also recognize O*NET as an authoritative source on the duties of the wide variety of occupations that it addresses.

⁹ 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.

¹⁰ 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

The Petitioner's designation of the proffered position as a Level I, entry-level position thus undermines the credibility of any claim as to the proffered position or the duties comprising it as being particularly complex, specialized, or unique. Again, "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. at 591.

Overall, we find the evidence of record insufficient to establish the substantive nature of the work the Beneficiary will perform. We are therefore precluded from finding that the proffered position satisfies 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 entry into 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.

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this additional reason.

IV. BENEFICIARY QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, we do not need to examine the issue of the Beneficiary's qualifications, because the Petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the Beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the Petitioner did not submit sufficient, consistent evidence regarding the proffered position to determine whether it requires a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the Beneficiary possesses that degree or its equivalent.

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.

V. LCA

Beyond the decision of the Director, we find that the Petitioner did not submit an LCA that corresponds to the petition. On the LCA, the Petitioner specified that the occupational classification for the proffered position corresponds to SOC (O*NET/OES) Code and Title 13-2051, “Financial Analysts,” at a Level I wage rate. By completing and submitting the LCA, and by signing the LCA, the Petitioner attested that the information contained in the LCA was true and accurate.

As discussed above, the Petitioner has not sufficiently explained how the proffered duties correspond to a Level I, entry-level financial analyst position.¹¹ We hereby incorporate our earlier discussion on the matter. The evidence of record is insufficient to establish whether the Petitioner has chosen the most appropriate and relevant O*NET occupational code classification.¹²

Nevertheless, even assuming *arguendo* that the financial analysts occupational classification is appropriate, we still could not find that the submitted LCA supports and corresponds to the proffered position. More specifically, we find that the Petitioner listed an incorrect prevailing wage on the LCA, and has not offered a wage equal to or exceeding the wage required by law. *See* Section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A) (the Petitioner must offer wages that are at least “the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question” or “the prevailing wage level for the occupational classification in the area of employment, whichever is greater.”)

¹¹ While the Petitioner explained how the duties of the proffered position “exceed[] the scope and competence of a typical property manager,” the Petitioner has not accounted some of the other proffered duties, such as the accounting, marketing, and managerial duties, that appear outside the scope of the financial analyst occupational classification

¹² With respect to the LCA, DOL provides clear guidance for selecting the most appropriate, relevant O*NET occupational code classification. The “Prevailing Wage Determination Policy Guidance” states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification If the employer’s job opportunity has worker requirements described in a combination of O*NET occupations, the NPWHC should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot, the NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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.

In this case, some of the job duties appear to correspond to a combination of other O*NET occupations. However, without sufficient information regarding these other occupations and their prevailing wages, we cannot determine if the financial analysts occupational classification represents the highest paying occupation, and thus, the most appropriate and relevant classification.

(b)(6)

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Here, the LCA listed the Beneficiary's sole place of employment in [REDACTED] Connecticut, which is located in [REDACTED]. The LCA lists the prevailing wage as well as the proffered wage as \$61,006 per year, and listed the prevailing wage source as the "2014 OFLC Online Data Center." The LCA was certified on July 15, 2014.

According to the OFLC Online Data Center, the Level I prevailing wage for financial analysts in the [REDACTED] CT" MSA, corresponding to the [REDACTED] locality, for the period 7/2014 – 6/2015, is \$62,317 annually. For more information regarding the wages for "Financial Analysts" – SOC (ONET/OES Code) 13-2051, in the [REDACTED] CT" MSA for the period 7/2014 – 6/2015, see [http://flcdatacenter.com/OesQuickResults.aspx?code=13-2051&area=\[REDACTED\]&year=15&source=1](http://flcdatacenter.com/OesQuickResults.aspx?code=13-2051&area=[REDACTED]&year=15&source=1) (last visited Mar. 8, 2016). The Petitioner incorrectly stated on the LCA that the prevailing wage is \$61,006 annually and attested on the Form I-129 and LCA that it will pay that wage to the Beneficiary which is \$1,311 less than the required wage.¹³

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. The regulations state, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

20 C.F.R. § 655.705(b) (emphasis added).

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. *See also* 20 C.F.R. § 655.705(c) (stating, in pertinent part, that by completing, submitting, and signing the LCA, the employer makes certain representations and agrees to several attestations regarding its wage responsibilities). Here, the Petitioner has not submitted a certified LCA that corresponds to the proffered position. Therefore, the petition cannot be approved for this additional reason.

¹³ Both the [REDACTED] CT and [REDACTED] CT MSAs cover parts of [REDACTED] however, only the [REDACTED] CT MSA covers [REDACTED]

VI. PROPERLY COMPLETED PETITION

Finally, also beyond the Director's decision, we find that the Form I-129 was not properly signed by the Petitioner. The Form I-129 instructions, which are incorporated into the regulations, state that the petition must be properly signed. *See* 8 C.F.R. § 103.2(a)(1). The instructions further indicate that a petition that is not properly signed or completed may be rejected or denied. *See* 8 C.F.R. § 103.2(a)(7)(i); 8 C.F.R. § 103.2(b)(1).

On page 12 of the Form I-129 Supplement H, the Petitioner did not sign the "Statement for H-1B specialty occupations and U.S. Department of Defense projects" certifying that it would be liable for the Beneficiary's reasonable costs of return transportation if he is dismissed from employment prior to the expiration of the period of authorized stay. *See* 214(c)(5) of the Act; 8 C.F.R. § 214.2(h)(4)(iii)(E). Although the Petitioner stated in its letter, dated July 18, 2014, that it "will pay the reasonable costs of return transportation for [the Beneficiary] to his last place of residence in the event of his dismissal prior to the end of the period of authorized stay," we cannot accept this statement in lieu of the required signature on the form. We note that the integrity of the immigration process depends on the employer properly signing the official immigration forms.

As the petition was not properly signed and completed, the petition is further precluded from approval. Thus, for this reason as well, the petition must be denied.

VII. CONCLUSION

We find that the evidence of record does not establish that the proffered position qualifies as a specialty occupation. Beyond the decision of the Director, we find that the Form I-129 was not supported by a corresponding LCA and the Form I-129 was not properly completed.

We may deny an application or petition that does not comply with the technical requirements of the law even if the Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-M- LLC*, ID# 16117 (AAO Apr. 1, 2016)