



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

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

MATTER OF Z-E-

DATE: JAN. 15, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a furniture import & sales business, seeks to temporarily employ the Beneficiary as a “Business/Import Analyst” 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, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. ISSUE**

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.<sup>1</sup>

**II. 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.

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<sup>1</sup> We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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.

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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. The Proffered Position

On the Form I-129, the Petitioner described itself as a furniture import and sales business with six employees. The Petitioner seeks to continue its employment of the Beneficiary in a Business/Import Analyst position.

The labor condition application submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 15-2031, “Operations Research Analysts,” from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

In a letter dated September 18, 2012, the Petitioner explained that it is a California corporation doing business as [REDACTED] and [REDACTED]. The Petitioner further explained that it specializes in “hand-crafted and hand finished” wood and iron furnishings, including custom wrought iron gates, wall ornaments, beds, table bases, and solid wood furnishings. The Petitioner stated that it has “a 4,000 square foot shop in the back and superior craftsmen” that provides “limitless” capabilities in wood. The Petitioner confirmed that it currently employs six staff.

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Regarding the proffered position, the Petitioner attested that it “need[s] a Business/Import Analyst with a business background to properly oversee of the expansion and the development of our business overseas.” The Petitioner asserted that the Business/Import Analyst will be required to “process, project and analyze the business and expansion projects.” The Petitioner then listed the specific duties of the proffered position as follows:

**Business – 70%**

- 20% of time – Expanding and organizing the existing business, including a detailed review and analysis of the operations and sales; analyzing and researching regional market trends; and reviewing economic conditions, trends and availability of our service in a wider regional market; determining the demands of clients and the market in general in reference to antiques and one-of-a-kind furniture items; traveling to India, Thailand and Indonesia to secure required items at the best possible price while maintaining quality.
- 20% of time – Analyzing problems in terms of management information and conceptualizing and defining problems; evaluating implementation and effectiveness of analysis; developing and applying time and cost networks to plan and control company expansion project; preparing for management reports defining problem, evaluation, and possible solution; studying information and selecting plan from competitive proposals that afford maximum probability of profit or effectiveness relating to cost or risk; authentication of antique and one-of-a-kind furniture before shipping and also evaluating and repairing any damage done in transit to preserve the authenticity of the item; international liaison between [REDACTED] and various overseas companies; anticipating potential problems and aiding in communication through the ability to speak both languages.
- 20% of time – Negotiating with suppliers to draw up procurement contracts, including: negotiating[,] administering, extending, terminating, and renegotiating contracts, and creating, analyzing, and tracking quarterly forecasts of operations; directing and coordinating activities of workers engaged in formulating bid proposals for our expansion and services, including: analyzing budget by comparing with actual expenditures on a monthly and annual basis for review by President; identifying opportunity and risks of company finances and budgets.
- 10% of time – Evaluating and monitoring contract performance to determine necessity for amendments or extensions of contracts, and compliance to contractual obligations, and preparing analysis reports on market conditions; approving and rejecting requests for deviations from contract specifications and delivery schedules; and analyzing price proposals, financial reports, and other data to determine reasonable of prices, including: conducting price and statistical trend survey within competitors’ markets to determine competitive expenditure data and operational

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management costs and preparing operational budget, researching and contacting similar organization at conferences and meetings to set wages and policy on a semi-annual basis, as well as, conducting research and resolving problems that arise concerning operations costs.

**Marketing – 15%**

- Showcasing products in International trade shows, i.e. [REDACTED]  
[REDACTED] Managing all logistics from show registration to designating which products are most beneficial to display, booth set-up, promotional material, ordering and customer relations.

**Finance – 15%**

- Determining the most efficient amount of inventory/furniture/supplies to be kept on hand and analyzing purchasing arrangements with buyers, and examine storage-cost data provided by the accounting department; and preparing all financial reports, such as income statements, balance sheets, analyses of future earnings and expenses; planning and conducting audits of data processing system and applications to safeguard assets, ensure accuracy of data and promote operational efficiency.

The Petitioner concluded that “the job responsibilities described above are typically learned at the university level in Business College due to the advanced and complex nature of the skills involved in understanding business and management.” The Petitioner claimed that the Beneficiary is “well qualified” for the proffered position based on his “equivalent U.S. Bachelor’s Degree based on his combined education and experience.”

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

**Business – 70%**

- 20% of time – Additional duties include: start a project by listening to managers describe a problem. Then, formally define the problem[,] study the problem, breaking it into its components. Then, he would gather information from a variety of sources and determine the optimal inventory, and discuss purchasing arrangements with buyers, and examine storage-cost data provided by the accounting department.
- 20% of time – Additional duties include: Assist management in the design and running of the department; ensuring the efficient reconciliation of all import entries for the site; liaise with Procurement, Finance, and Customs brokers to ensure cost effectiveness of Import / Export Department; manage all documentation relating to import entries; complete import entry audits following the correct processes and

procedures; deal with Customs Broker and US Customs inquiries and requests as required.

- 20% of time – Additional duties include: Act as the primary liaison between the business community, international factories/developers, and other external partners for all project requirements during the analysis phase of [] each large purchasing project. He will conduct interviews with all international stakeholders to elicit functional furniture and stability requirements, modeling those requirements in an organized manner, then managing and communicating those requirements throughout the project life cycle.
- 10% of time – Additional duties include: Identify the items to be ordered and correlate them with the manufacturers in the various countries we are dealing with to let them know what we are looking for, negotiate prices and determine a shipping timeline; coordinate all information received in various formats concerning the import status of commercial merchandise during the purchase to import process; create and update contract sheets; create shipping advice and distribute to import and warehouse.

Marketing – 15% – Additional duties include: Solicit financial participation from the suppliers for the trade shows, reducing the company’s [expense] in doing so and increasing profits.

Finance – 15% – Additional duties include: Assist the business with the implementation of new end user processes as well as internal support processes in order to streamline, standardize and create increased efficiency; assists in implementing new software and technologies to meet business needs and maintain vendor support.

The Petitioner further elaborated that the Beneficiary “will not be a mere ‘Buyer’ or ‘Sales Representative.’” The Petitioner asserted that the duties of purchasing managers, buyers, and purchasing agents “are quite different than the Beneficiary’s duties and may not require a Bachelor’s degree.” In particular, the Petitioner highlighted the Beneficiary’s “high level of responsibility with the suppliers” and duties involving sourcing, finances, shipping and logistics, damaged products, traveling abroad, marketing, and trade shows. The Petitioner stated that “the duties clearly require someone with the minimum of a Bachelor’s degree” and that “[t]his job cannot be performed by anyone with less than a Bachelor’s degree.”

On appeal, the Petitioner affirms that “[t]he job responsibilities described above are typically learned at the college/university level due to the advanced and complex nature of the skills involved in understanding business and management.” The Petitioner stated that it “has clearly shown that a bachelor’s degree or its equivalent is required for this specialty position.”

### C. Analysis

In establishing the position as a specialty occupation, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of the Petitioner's business operations. USCIS looks at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer, as described in the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, and other salient aspects of the proposed employment.

Thus, a crucial aspect of this matter is whether the Petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. We find that the Petitioner has not done so here.

First, the Petitioner has described the duties comprising the proffered position in relatively abstract and generalized terms that do not sufficiently illuminate the substantive nature of the work to be performed. For example, the Petitioner stated that the Beneficiary's duties include "[a]nalyzing problems in terms of management information and conceptualizing and defining problems" and "evaluating implementation and effectiveness of analysis." However, the Petitioner has not further identified the specific tasks the Beneficiary will perform in the furtherance of these broadly-termed duties. The Petitioner also listed several other duties involving analyzing, defining, and resolving "problems," but has not explained in detail the nature of these "problems" nor given concrete examples of the types of "problems" under the Beneficiary's responsibility.

We observe that several of the job duties provided by the Petitioner have been taken almost directly from the occupational category "Operations Research Analysts" as described in O\*NET. See O\*NET Online Details Report for "Operations Research Analysts," <http://www.onetonline.org/link/details/15-2031.00> (last visited Jan. 14, 2016).<sup>2</sup> However, while this type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, it generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval. That is, the description for an occupational category is inadequate to convey the substantive work that the Beneficiary will perform within the Petitioner's business operations.

In fact, despite the Petitioner's reliance upon the general descriptions of the occupational category "Operations Research Analysts" as found in O\*NET, the evidence of record is insufficient to establish that the "Operations Research Analysts" occupational classification corresponds to the

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<sup>2</sup> For example, the O\*NET Online Details Report for the occupational category "Operations Research Analysts" lists duties including "[a]nalyze information obtained from management to conceptualize and define operational problems" and "[p]repare management reports defining and evaluating problems and recommending solutions." *Id.*

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proffered position. According to O\*NET, one of the core duties for “Operations Research Analysts” is to “[f]ormulate and apply mathematical modeling and other optimizing methods to develop and interpret information that assists management with decision making, policy formulation, or other managerial functions.” *Id.* Consistent with O\*NET, the Department of Labor’s *Occupational Outlook Handbook (Handbook)* summarizes the duties of “Operations Research Analysts” as to “use advanced mathematical and analytical methods to help organizations investigate complex issues, identify and solve problems, and make better decisions.”<sup>3</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Operations Research Analysts,” <http://www.bls.gov/ooh/math/operations-research-analysts.htm#tab-1> (last visited Jan. 14, 2016). However, the Petitioner has not specifically explained in detail what mathematical and analytical methods the Beneficiary will utilize. The Petitioner also has not explained in detail the nature of the “problems” that the Beneficiary will address, and why such “problems” would require “advanced mathematical and analytical methods” to be resolved.

In addition, there are several job duties which involve expanding and developing the Petitioner’s overseas business. For instance, the Petitioner specifically stated that the Beneficiary will “properly oversee of the expansion and the development of our business overseas.” The Petitioner also listed duties such as “developing and applying time and cost networks to plan and control company expansion project” and “directing and coordinating activities of workers engaged in formulating bid proposals for our expansion and services.” However, the Petitioner has not provided additional details regarding its overseas business and expansion plans. Another one of the proffered duties is to “conduct interviews with all international stakeholders,” but the Petitioner has not identified who these “international stakeholders” are and their relationship to the company.

Moreover, the Petitioner’s descriptions of the proffered duties are not consistent with the company’s claimed staffing and organizational structure. According to the Petitioner’s organizational charts, the company’s staffing and organizational structure consists of the President [REDACTED], a Financial Manager [REDACTED], a Business/Import Analyst (the Beneficiary), an Office Manager [REDACTED], and three to four Factory Workers.<sup>4</sup>

The Petitioner in the instant matter is a furniture retail sales business.<sup>5</sup> The Petitioner describes itself on its website and promotional material as a furniture store with a large, one-half acre showroom offering “the largest selection of rustic furniture in the [REDACTED] area.” The Petitioner specifically stated in its RFE response that the Beneficiary will “incorporate his knowledge with the ideas of the sales staff as to what items are most appealing to advertise.” However, the Petitioner has not sufficiently explained and documented which of its six employees constitutes its “sales staff” or

<sup>3</sup> We recognize the *Handbook* as authoritative sources on the duties of the wide variety of occupations that they address. The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. All our references to the *Handbook* are to the 2016 – 2017 edition available online.

<sup>4</sup> The Petitioner’s first organizational chart depicted four factory workers. Its second organizational chart depicted three factory workers. All other positions were the same in the two organizational charts.

<sup>5</sup> On its 2011 federal tax return, the Petitioner listed its primary business activity as “furniture retail.”

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otherwise performs the day-to-day sales duties that are at the core of the Petitioner's business operations. The Petitioner's organizational charts do not depict any sales or showroom staff. Nor does the Petitioner expressly list sales or showroom duties for the Beneficiary in its descriptions of the proffered position. In fact, the Petitioner contends that the Beneficiary's duties "are quite different" from duties of sales representatives. The apparent lack of any sales staff raises questions regarding the reliability of the Petitioner's descriptions of its claimed staffing and organizational structure, as well as the Beneficiary's claimed duties. "[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). "Doubt cast on any aspect of the Petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Id.* at 591.

Upon review of the evidence of record, it appears that the Beneficiary is performing the actual sales duties for the Petitioner. More specifically, in the online reviews of the Petitioner's business submitted in support the petition, many reviews referenced the Beneficiary (also identified as [REDACTED] on the Form I-129) as performing sales duties such as working with customers to pick out new paint stains, helping customers find unique pieces of furniture, and helping customers create custom pieces for their homes. The letter from [REDACTED] also references the Beneficiary as "a Good Businessman whose selling skills are increasing the [Petitioner's] sales." This aspect of the Beneficiary's job duties further undermines the Petitioner's credibility. *See id.*

The Petitioner's descriptions of the proffered duties are inconsistent with the company's claimed staffing and organizational structure in other aspects as well. For example, some of the duties include "discuss purchasing arrangements with buyers" and "liaise with Procurement." However, the Petitioner has not sufficiently explained and documented who its "buyers" (in the plural) or "Procurement" personnel are. The Petitioner's organizational charts do not depict any such positions. As another example, the Petitioner stated that the Beneficiary will "ensure cost effectiveness of Import / Export Department." The Petitioner's organizational charts do not depict an "Import / Export Department" or any personnel subordinate to the Beneficiary in his position as the sole Business/Import Analyst.<sup>6</sup> The Petitioner similarly stated that the Beneficiary will be "directing and coordinating activities of workers engaged in formulating bid proposals for our expansion and service." Again, there is no explanation and documentation of who these "workers" (in the plural) are, whose actions the Beneficiary will purportedly be directing. There are also references to the Petitioner's "accounting department," but insufficient explanation and documentation regarding this claimed department.<sup>7</sup>

Furthermore, the Petitioner's breakdown of the percentage of time the Beneficiary will spend on his duties is too broad to elucidate the substantive nature of the proffered position. To illustrate, the

<sup>6</sup> The Petitioner stated in its RFE response that the Beneficiary "does not supervise any employees" and "is not a manager."

<sup>7</sup> The organizational chart only depicts one "Financial Manager," [REDACTED] whom the Petitioner later clarified was an unpaid, volunteer intern.

Petitioner stated that the Beneficiary will spend 20% of time on a wide variety of duties, ranging from “[e]xpanding and organizing the existing business” to traveling abroad to purchase pieces for the store.<sup>8</sup> The Petitioner did not further break down how much of this 20% would be spent on each particular and distinct duty. In addition, while the Petitioner broke down the Beneficiary’s “Business” duties into four different groups (three groups each accounting for 20% of his time, and one group accounting for 10% of his time), the duties described in these groups are not sufficiently distinguishable from one another.<sup>9</sup> We are thus unable to discern the approximate amount of time the Beneficiary will dedicate to each of his duties, many of which are quite different in nature.

Overall, we find the evidence of record insufficient to establish the substantive nature of the work to be performed by the Beneficiary. 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 proffered position also cannot be found to qualify for classification as a specialty occupation based upon the Petitioner’s stated minimum educational requirement for the proffered position.

The Petitioner has not clearly stated whether it requires at least a bachelor’s degree *in a specific specialty*. While the Petitioner has consistently declared that the proffered position requires a bachelor’s degree, it has not specified whether the required bachelor’s degree must be in any specific field of study. Requiring a bachelor’s degree alone, without further specification, is insufficient to establish that the proffered 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 mere requirement of a degree, 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

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<sup>8</sup> The Petitioner stated that the Beneficiary will travel abroad approximately four times a year.

<sup>9</sup> For instance, the Petitioner stated that the Beneficiary will spend an undetermined proportion of 20% on “a detailed review and analysis of the operations and sales,” another undetermined proportion of 20% on “[a]nalyzing problems in terms of management information and conceptualizing and preparing management reports,” another undetermined proportion of 20% on creating, analyzing, and tracking quarterly forecasts of operations, and an undetermined proportion of 10% “conducting research and resolving problems that arise concerning operations costs.”

sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”). Thus, a requirement of a general-purpose bachelor’s degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

While not clear, some of the Petitioner’s statements imply that the proffered position requires at least a bachelor’s degree in business administration. The Petitioner attested that the Beneficiary is qualified for the proffered position by virtue of his degree and experience, which the Petitioner claimed is the equivalent of a U.S. bachelor’s degree in business administration. The Petitioner also stated that “the job responsibilities . . . are typically learned at the university level in Business College” and require an “understanding business and management.”

However, a requirement of a bachelor’s degree in business administration is still insufficient to establish that the proffered position qualifies as a specialty occupation, as a degree in business administration is considered a general-purpose degree.<sup>10</sup> *See id.* (characterizing a business administration degree as a general-purpose degree). 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 discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Accordingly, although a general-purpose bachelor’s 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, either. *Id.*<sup>11</sup>

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<sup>10</sup> 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 at 147.

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”).

<sup>11</sup> Specifically, the United States Court of Appeals for the First Circuit stated 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.” *Id.* (citing *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)).

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Finally, we will briefly explain why we accord little probative value to the evaluation by [REDACTED] concluding that the proffered position qualifies as a specialty occupation.

In coming to this conclusion, the only evidence [REDACTED] states he relied upon was the Petitioner's job description. As previously discussed, however, the Petitioner's job description contains numerous deficiencies and inconsistencies that preclude a meaningful understanding of the substantive nature of the proffered position. [REDACTED] does not indicate whether he considered or was aware of these deficiencies and discrepancies. Additionally, [REDACTED] does not indicate whether he considered or was aware of the deficiencies and inconsistencies concerning the Petitioner's business operations, including its claimed staffing and organization structure. We consider these to be significant omissions, in that it suggests an incomplete or inaccurate review of the proffered position and a faulty factual basis for his ultimate conclusion.

[REDACTED] also does not sufficiently explain the factual bases for his conclusions regarding the proffered position's claimed complexity and required specialized knowledge. As such, [REDACTED] letter contains conclusory statements that are not entitled to probative value. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re 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)).

Furthermore, [REDACTED] concludes that the proffered position is considered a specialty occupation because it requires "the attainment of at least a Bachelor's in Business Administration or related degree." However, as discussed above, the requirement of a bachelor's degree in business administration, without further specialization, is inadequate to establish that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147; cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560.

For these reasons, we conclude that [REDACTED] evaluation is of limited evidentiary value in this proceeding. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an

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Notwithstanding the deficiency of a business administration degree as a general-purpose degree, it is also not clear how such a degree would provide the knowledge and skills required to perform the proffered duties. For example, the Petitioner has not adequately explained what course(s) of study leading up to a business administration degree would provide the necessary knowledge to perform duties such as "authentication of antique and one-of-a-kind furniture." Furthermore, the Petitioner has repeatedly emphasized the cultural and language requirements of the position, stating, for example, that the hard-to-find, antique furniture and architectural pieces from India "can only be sourced through a person who knows what areas of the country to find them, as well as being able to negotiate with local cultural businessmen." The Petitioner also stated that "[o]nly a person who has the local knowledge of the [foreign] area and cultures can do this [job]." Again, the Petitioner has not explained what course(s) of study leading up to a business administration degree would provide the necessary knowledge of foreign cultures and language.

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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. *Id.*

### III. CONCLUSION

The evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.<sup>12</sup>

We recognize that this is an extension petition. However, we are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See 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. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). 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 F. App'x 556 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. We are not 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).

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

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<sup>12</sup> Since the identified basis for denial is dispositive of the Petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the Petitioner seeks again to employ the Beneficiary as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome this additional ground in any future filing.

More specifically, the Petitioner claims that the Beneficiary holds an “equivalent U.S. Bachelor's Degree based on his combined education and experience.” The Petitioner submitted an evaluation from [REDACTED] Associate Professor of Management Science at the [REDACTED] concluding that the Beneficiary possesses the equivalent of a U.S. bachelor's degree in business administration based upon a combination of his education and experience. However, the Petitioner has not sufficiently established that [REDACTED] is “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,” in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The “Brief Summary of Evaluator's Credentials” for [REDACTED] states only that he “has evaluated students and colleagues” and “has had extensive experience reviewing foreign academic and work experience credentials in all disciplines.”

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(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 Z-E-*, ID# 11157 (AAO Jan. 15, 2016)