



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

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

MATTER OF KIGW-M- LLC

DATE: OCT. 3, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an investment firm, seeks to temporarily employ the Beneficiary as a part-time “financial analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition, concluding that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence is sufficient to show that the proffered position qualifies as a specialty occupation position.

Upon *de novo* review, we will dismiss the appeal.

I. 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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “financial analyst.” The Petitioner stated that the Beneficiary would perform the following duties (note: errors in the original text have not been changed):

1. Apply theoretical understanding of Emerging Markets, Foreign Policy and Analytical Statistics to identify and research investment opportunities in Asia and Latin America. **This will account for 30% of candidate’s duty.**

This includes performing macro policy analysis, regulatory analysis and industry analysis to identify overseas investment opportunities; constantly searching for cross-border M&A activities; and determining/evaluating the correlation between various businesses, geographical and financial parameters in relation to our existing investment portfolio.

2. Make investment recommendations and assist business advisory services to foreign clients. **This will account for 30% of candidate’s duty.**

Be responsible for collecting extensive information and gaining insight into different industries and their associate values chains; gather and analyze financial data supporting intensive company and industry-related

research with the goals of determining potential investment opportunities and providing recommendations for our clients.

3. Participate in extensive deal analysis, financial modeling and due diligence activities, establish and maintain relationships with companies in China, and perform post-investment monitoring functions. **This will account for 40% of candidate's duty.**

Build financial analytical models, perform extensive financial analysis, create understandable documents which can be presented in a clear and concise manner to a diverse audience in order to introduce our company and our projects; use computer spreadsheets to draw charts and graphs, build financial projection in order to illustrate our investment reports; continue to monitor investee companies after our investments are made.

The Petitioner stated that the proffered position requires a minimum of a bachelor's degree in finance or a related major.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. First Criterion

We turn first 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. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

³ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Financial Analysts” corresponding to the Standard Occupational Classification code 13-2051.⁴

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

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

....

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

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Financial Analysts,” <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited Sept. 29, 2016).

The *Handbook* does not indicate that financial analyst positions normally require a minimum of a bachelor’s degree in a specific specialty, or the equivalent. While the *Handbook* states that most positions require a bachelor’s degree, it does not indicate that the degrees required for such positions would necessarily have to be in a specific specialty. To the contrary, the *Handbook* states that “a number of fields of study provide appropriate preparation,” including accounting, economics, finance, statistics, and mathematics.

Further, although a general-purpose 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. *Cf.*

⁴ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

Matter of Michael Hertz Assocs., 19 I&N Dec. 558, 560 (Comm'r 1988). Therefore, the *Handbook's* recognition that a non-specialty master's degree in business administration is sufficient for entry into the occupation does not eligibility under this criterion, either.

While the Petitioner's citation to DOL's Occupational Information Network (O*NET) is acknowledged, it does not establish that the proffered position qualifies as a specialty occupation under the first criterion, either. In general, O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position, as O*NET's Job Zone designations make no mention of the specific field of study from which a degree must come. Again, we interpret 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 proposed position. Furthermore, the Specialized Vocational Preparation (SVP) ratings, which are cited within O*Net's Job Zone designations, are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do not describe how those years are to be divided among training, formal education, and experience and do not specify the particular type of degree, if any, that a position would require.

Finally, we find that, to the extent that they are described in the record of proceedings, the duties that the Petitioner ascribes to the proffered position indicate a need for a range of knowledge of financial analysis, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

The duties and requirements of the position as described in the record of proceedings 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).

B. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's

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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.

The Petitioner submitted an undated letter from [REDACTED] a managing partner of [REDACTED] [REDACTED] stated that the company employs eight workers, including two financial analysts. She further stated, “We have attached copies of degrees of all employees we sponsored as financial analysts for your reference.” Her letter was accompanied by copies of diplomas issued to [REDACTED] and [REDACTED].

However, there is no further information regarding the [REDACTED] and [REDACTED] employment with [REDACTED] to establish that their positions are parallel to the proffered position. Further, there is no evidence that [REDACTED] is within the Petitioner’s industry, and is similar to the Petitioner.⁵ Therefore, we do not find the letter probative to establish that the proffered position qualifies as a specialty occupation.

The Petitioner also provided four job vacancy announcements placed by other companies, all of which advertise positions entitled “Financial Analyst.” However, none of the entities that placed those vacancy announcements appears to conduct business in the Petitioner’s industry.⁶ As such, they are generally outside the scope of inquiry concerning the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

One of the vacancy announcements states a requirement for a “Bachelor’s Degree (Accounting, Economics, Finance, Mathematics, etc.)” Thus, the organization that placed it does not appear to require a bachelor’s degree *in a specific specialty*.

⁵ The website for New York Secretary of State reveals that the Petitioner and [REDACTED] occupy the same address, but they appear to be separately incorporated. Notably, the record contains an organizational chart for the Petitioner’s operations indicating that [REDACTED] is also the Petitioner’s managing partner. Given the very close, if unclear, relationship between [REDACTED] and the Petitioner, we do not find [REDACTED] letter particularly persuasive.

⁶ One of the advertising organizations identified itself as [REDACTED] and stated that it is a “non-profit organization in [REDACTED].” Another, the [REDACTED] stated that it is a “specialty niche provider of contingent staffing and project based solutions, executive search, contingency full time placement and outsourcing.” Another stated that it is in the “Legal Services Industry.” The fourth vacancy announcement states that it was placed by the “NY office of [REDACTED] law firm.”

Another vacancy announcement states that the position it announces, “requires an undergraduate degree, preferably in finance, economics, mathematics, statistics, or other technical field.” Not only is that array of subjects too varied to delineate a specific specialty, but a preference does not indicate minimum requirement. For both reasons, that vacancy announcement does not state a requirement of a minimum of a bachelor’s degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements involved 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, we would still find that the Petitioner had not demonstrated what statistically valid inferences, if any, can be drawn from four announcements with regard to the common educational requirements for entry into parallel positions in similar organizations in the Petitioner’s industry.⁷

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).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor’s degree in a specific specialty, or its equivalent.

A review of the record of proceedings finds 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 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

⁷ See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). USCIS “must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the Petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case.

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 (entry-level) wage. Such a wage level is for a position which only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, is contrary to a position that requires the performance of complex duties.⁸ It is, instead, a position for an employee who has only basic understanding of the occupation.

In order to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the Petitioner would be obliged to demonstrate that other wage Level I financial analyst positions, entry-level positions requiring only a basic understanding of financial analysis, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

For all of these reasons, 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 more unique or complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the Petitioner did 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 Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative

⁸ 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.

complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

In a letter submitted in response to a request for evidence (RFE) issued in this case, the Petitioner stated, "As our firm is a newly established firm, this Financial Analyst is the first one we have at this moment."

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. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁹

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the 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

⁹ While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

hence one not likely distinguishable by relatively specialized and complex duties.¹⁰ 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. The evidence of record does not, therefore, satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

E. The Case Law Cited by the Petitioner

1. *Tapis Int'l*

The Petitioner cites to *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) which is often cited for the proposition that “[t]he United States District Court [in *Tapis*] has held that in positions where an employer requires a Bachelor’s degree, but does not specify a field, the regulatory definition of specialty occupation may be satisfied by looking at a combination of education with experience in a specific field.”

Specifically, we note that in *Tapis*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor’s degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS’s interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for “various combinations of academic and experience based training.” *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that “[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience.” *Id.* at 177.

We agree with the district court judge in *Tapis*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor’s degree in a specific specialty, or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (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

¹⁰ We further note that the Beneficiary’s duties may require the knowledge of Chinese. The Petitioner claims that 40% of the Beneficiary’s duties include establishing and maintaining relationships with leading companies in China.

In accordance with the guidance provided by DOL, a language requirement other than English in a petitioner’s job offer generally is considered a special skill for all occupations, with the exception of “Foreign Language Teachers and Instructors,” “Interpreters,” and “Caption Writers.” *Id.* Here, the Petitioner designated the proffered position under the occupational category “Financial Analysts” at a Level I, and it appears that the foreign language requirement was not reflected in the wage-level for the proffered position.

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 philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

Moreover, we also agree that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor’s degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. We do not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

In addition, the district court judge does not state in *Tapis* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor’s degree in that field. In other words, we do not find that *Tapis* stands for either (1) that a specialty occupation is determined by the qualifications of a beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of a beneficiary. A beneficiary’s credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”).

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term “specialty occupation” could not be expanded “to include those occupations which did not require a bachelor’s degree in the specific specialty.” Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61,111, 61,112 (Dec. 2,

1991) (to be codified at 8 C.F.R. pt. 214). More specifically, in responding to comments that “the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations,” the former INS stated that “[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor’s degree in the specific specialty, or its equivalent]” and, therefore, “may not be amended in the final rule.” *Id.*

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis*. We also note that, 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, 719-20 (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.*

2. Residential Finance

Next, the Petitioner cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), which is often cited 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.”

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor’s or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks. It is important to note that in a subsequent case that was reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Fin. Corp.* *See Health Carousel, LLC v. U.S. Citizenship & Immigration Services*, No. 1:13-CV-23, 2014 WL 29591, 2014 WL 29591 (S.D. Ohio 2014).

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.¹¹ We also note that, 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, 719-20 (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.*

3. Unpublished AAO Decisions

Finally, the Petitioner refers to unpublished decisions in which we determined that the positions proffered in those matters qualified as a specialty occupation. When "any person makes application for a visa or any other document required for entry, or makes application for admission, . . . the burden of proof shall be upon such person to establish that he is eligible" for such benefit. Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be a shift in the evidentiary burden in these proceedings from the Petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the Director nor our office was required to request and/or obtain a copy of the unpublished decisions cited by the Petitioner.

If a petitioner wishes to have unpublished decisions considered by USCIS in the adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with the applicable regulations. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i). In the instant case, the Petitioner did not submit a copy of the unpublished decisions. As the record of proceedings does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in these proceedings. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

¹¹ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

The burden is on the Petitioner 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 KIGW-M- LLC*, ID# 124928 (AAO Oct. 3, 2016)