



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

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

In Re: 21157665

Date: MAY 19, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to employ the Beneficiary 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 Vermont Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**I. LEGAL FRAMEWORK**

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . . ” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor.

In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position. 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). We construe the term “degree” 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”). Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(I) states that an H-1B classification may be granted to a foreign national who “*will perform services in a specialty occupation . . .*” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent.

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. ANALYSIS

The Petitioner stated that the position requires an individual to possess at least a bachelor’s degree in finance, business, economics, or a closely related scientific or quantitative discipline.<sup>1</sup> The Director denied the petition concluding that the record did not establish that the proffered position qualified as a specialty occupation, and that the position’s prerequisites were not sufficiently detailed to satisfy the statutory definition of a specialty occupation.

On appeal, the Petitioner claims the Director did not apply the correct standard of proof to its claims and evidence, it failed to appreciate the quantitative nature of the position, and it erred in the determination that the organization did not satisfy any of the regulatory criteria. We note that the Director concluded that the Petitioner’s position prerequisites were not in sufficiently related fields, and that some were inadequate to satisfy the H-1B program requirements without some additional level of specificity. However, we also observe that the Petitioner provided additional detail within its response to the Director’s RFE and it appears the Director did not factor those additional details into its decision. A review of those additional details appears sufficient to mitigate the Director’s concerns they raised in the denial decision.

Nevertheless, for the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>2</sup> Specifically, we conclude that the record does not establish that the job duties require an educational background, or its equivalent, corresponding with a specialty occupation.<sup>3</sup>

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<sup>1</sup> In response to the Director’s request for evidence (RFE), the Petitioner provided additional details about the proffered position’s duties.

<sup>2</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>3</sup> The Petitioner submitted documentation to support the petition, including evidence regarding the position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

## A. First Criterion

We begin with the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. Although it is not a mandatory or an exclusive resource, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as one possible resource to inform our inquiry on the duties and educational requirements of the wide variety of occupations that it addresses. While we do not maintain that the *Handbook* is the exclusive source of relevant information, the Petitioner relies on this resource here. To satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a determination that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry. "[T]he choice of what reference materials to consult is quintessentially within an agency's discretion . . . ." *Royal Siam Corp.*, 484 F.3d at 146.

The Petitioner submitted the required DOL ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA) with this petition, where it classified the proffered position under the occupational title "Financial Analysts" corresponding to the standard occupational classificational code 13-2051. The portion of the *Handbook* that was in effect when the Petitioner filed the petition titled "How to Become a Financial Analyst" stated, in pertinent part: "Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, and mathematics." Bureau of Labor Statistics, DOL, *Handbook*, Financial Analysts (Sept. 4, 2019), <https://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4>. Based on the *Handbook's* text, while more than half of the positions in this occupation require a bachelor's degree, a number of different fields will prepare the individual to enter into the occupation.

When the Director issued its adverse determination for this criterion, they determined that the Petitioner's position requirements differed from the *Handbook*. The Director also noted the proffered position's requirements were inadequate to satisfy the H-1B program requirements without some additional level of specificity, but we determined the Petitioner sufficiently resolved this issue. The Petitioner's Occupational Information Network (O\*NET) arguments were dismissed because that resource does not contain sufficient detail to satisfy this criterion's requirements.

On appeal, the Petitioner notes that the *Handbook* "was not designed to assess the specialty occupation status of either occupations or particular positions within them. . . . While practically all parties in the immigration process look to the [*Handbook*] for guidance on occupation requirements, *the [Handbook] was never intended as a guide to minimum education requirements.*" (Emphasis in original). We take no issue with, and we agree with, the Petitioner's argument here. The Petitioner further states in the appeal brief that considering the wide audience of the *Handbook* as a resource, it seems evident that it would include a wide range of fields.

However, the Petitioner notes that this should not lead to the conclusion that anyone with a degree in a listed field is automatically qualified for any role within the Financial Analysts field. It notes that each position and employer have their own educational requirements based on the nature of the specific role within the organization. While we agree that the *Handbook* includes fields that are related to quantitative methods, we conclude that it does not establish that this particular position requires a bachelor's degree in a specific specialty in order to enter it. Setting aside the fact that the fields of study

the *Handbook* lists are related, unique to this *Handbook* profile is the scenario where it illustrated a number of examples, but it did not specify that the fields it listed were an exhaustive list. This results in the possibility that “[a] number” of additional fields of study not listed in the *Handbook*—many of which may not relate to a body of highly specialized knowledge required for the occupation—could prepare an individual for entry into this broader occupational category.

Stated in different terms, the *Handbook*’s recognition that degrees in different disciplines may provide sufficient preparation to perform the duties to enter into this occupation strongly suggests that a bachelor’s degree in a specific specialty is not a standard, minimum entry requirement. See *Taylor Made Software, Inc. v. Cuccinelli*, 453 F. Supp. 3d 237, 243–44 (D.D.C. 2020) (citing *Caremax Inc. v. Holder*, 40 F. Supp. 3d 1182, 1187–88 (N.D. Cal. 2014) in which the court held that “[a] position that requires applicants to have any bachelor’s degree, or a bachelor’s degree in a large subset of fields, can hardly be considered specialized.”). Such a strong suggestion precludes the Petitioner from establishing by a preponderance of the evidence that it has met its burden of proof that a qualifying degree “is normally the minimum requirement for entry into the particular position.”

When the *Handbook* either includes disparate fields of study as sufficient to qualify for an occupation, or leaves open the possibility of additional unnamed fields—many of which may not relate to a body of highly specialized knowledge required for the occupation—a petitioner generally will be unable to demonstrate eligibility under the first criterion based on the *Handbook* as the sole resource. The *Handbook* lists information for the broader Financial Analysts occupation, and indicates that a bachelor’s degree in a number of disciplines provide preparation for entering the occupation. It is important to note that the proffered position is a single job within the spectrum of positions that comprise the broader Financial Analysts occupation.

If the Petitioner wishes to rely solely on the *Handbook* as the only resource under this criterion, it must demonstrate that the particular position it presents in the petition requires a bachelor’s degree or higher in a specific specialized curriculum (or its equivalent) as the normal minimum requirement for entry into the position. We come to this conclusion as the *Handbook* does not limit its analysis to the particular position within this petition, and instead encompasses and includes those positions that broadly make up this occupation. In accordance with such inclusion, the *Handbook* factors in duties and functionality that are not necessarily part of the position in this petition. For instance, the version of the *Handbook* in use when the Petitioner filed the petition divided the Financial Analysts occupation into two categories: buy-side analysts and sell-side analysts. It further listed multiple types of financial analysts as follows:

- **Portfolio managers** select the mix of products, industries, and regions for their company’s investment portfolio. These managers are responsible for the overall performance of the portfolio. They are also expected to explain investment decisions and strategies in meetings with stakeholders.
- **Fund managers** work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make buy or sell decisions in reaction to quickly changing market conditions.
- **Ratings analysts** evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.

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

Even though the Petitioner repeatedly refers to the *Handbook* as support under this criterion, it did not address the categories or the types of financial analysts this resource discusses. With such a wide array of financial analyst types that perform functions beyond those that the candidate for the proffered position would execute, the Petitioner has not sufficiently persuaded us that it should be able to rely solely on the *Handbook* entry for Financial Analysts as a resource that adequately represents or that equates to the position it offers here. Consequently, we conclude that the Petitioner has not demonstrated that a bachelor's or higher degree (or its equivalent) is normally the minimum requirement for entry into this particular position, which the first criterion mandates.

We conclude that, to the extent that the Petitioner described the numerous duties within the record, these functions reflect a need for a range of knowledge of investment analysis and strategy, but do not establish any particular level of formal, postsecondary education leading to a bachelor's degree or higher in a specific specialty as minimally necessary to attain such knowledge.

Additionally within the appeal brief, the Petitioner references the opinion letter from [redacted] a professor at [redacted] University, and posits that the Director summarily dismissed his opinion and relied on a precedent decision that the Petitioner contends is not comparable to this case because it is a global financial institution and the employer in the cited case was a yarn manufacturer. Although the Petitioner's appeal brief refers to [redacted]'s opinion letter, it does not explain how his opinion supports the Petitioner's claims under this criterion. And we note that within the initial filing and when the Petitioner responded to the Director's RFE, it did not present any claims relating to [redacted]'s opinion letter under this criterion. As a result, not only has the Petitioner failed to adequately inform us of how this evidence contributes to its claims under this criterion, it now presents new eligibility claims on appeal that it did not advance before the Director. New assertions advanced for the first time to an administrative appellate body are not properly before us. *Matter of M-F-O-*, 28 I&N Dec. 408, 410 n.4 (BIA 2021) (refusing to consider the appellant's claims that were presented for the first time on appeal).

The Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Therefore, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

## 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). The first prong contemplates 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. We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish 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)).

As previously discussed, the *Handbook* does not indicate that a bachelor’s degree in a specific specialty is a common requirement within the industry for parallel positions among similar organizations. Also, the Petitioner did not submit evidence from an industry professional association or argue that for firms or individuals in the industry such a degree is a minimum requirement for entry into the position.

When determining whether the Petitioner and other organizations share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the size, scope, or scale of operations, expenditures, as well as the level of revenue and staffing (to list just a few elements that may be considered). *Id.* at 1021. It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In support of this prong, the Petitioner submitted numerous job advertisements from other organizations. The Director also discussed the opinion letter from Mr. Roychoudhury under this prong. Considering the job advertisements, the Director determined they did not meet this criterion’s requirements. The Director acknowledged that although the job postings show the other organizations may have required a bachelor’s degree, they did not demonstrate that degree must be in a specific specialty because of the wide variety of concentrations that would be acceptable. The Director further noted that the Petitioner did not demonstrate the postings are in its industry, nor did it establish that the other organizations were comparable to the Petitioner in size, nor that the advertisements were in parallel positions. Finally, the Director decided that the opinion letter did not support the Petitioner’s claims.

On appeal, the Petitioner claims the Director erred because they failed to consider real-world hiring practices and contests the Director’s analysis relating to a wide variety of fields. Notably, the Petitioner does not address the Director’s findings that the organizations were not in the same industry or comparable in size to the petitioning entity. The Petitioner also does not contest the Director’s determination regarding the opinion letter. Within the appeal, the Petitioner has not specifically addressed how the positions are parallel, or how the other entities are similar organizations. Ultimately, it has not argued how the evidence demonstrates it has met this criterion’s requirements.

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor’s degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar

organizations. Consequently, the Petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

The Director discussed the evidence submitted for this criterion and found that the Petitioner did not establish its eligibility. On appeal, the Petitioner does not contest the Director's findings for this prong of the criterion or offer additional arguments. Therefore, the Petitioner has abandoned its eligibility claims under this criterion. *E.g.*, *Matter of Zhang*, 27 I&N Dec. 569, 569 n.2 (BIA 2019) (finding that an issue not appealed is deemed as abandoned). 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. The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor v. Meissner*, 201 F.3d 384, 387–88 (5th Cir. 2000). A petitioner must demonstrate that its imposed requirements are genuine. *Sagarwala v. Cissna*, 387 F. Supp. 3d 56, 69 (D.D.C. 2019). *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (BIA 1988) (finding: (1) the requirement of a degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, does not establish eligibility; and (2) an analysis of eligibility includes not only the actual requirements specified by the petitioner but also those required by the specific industry in question, to determine, in part, the validity of a petitioner's requirements).

Were U.S. Citizenship and Immigration Services limited solely to reviewing the 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 Petitioner created a token degree requirement. *Defensor*, 201 F.3d at 387–88. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

Before the Director, the Petitioner presented internal job announcements for a position with a similar but different title, an organization chart depicting its personnel and their positions, and resumes for those occupying a financial analyst position in the organization. The Director concluded that the job announcements were not adequate as they listed disciplines that were too broad and that the Petitioner did not show how they were sufficiently related to the duties, and the resumes were not supported by other probative evidence to demonstrate the Petitioner has historically hired those who hold at least a bachelor's degree in a specific specialty or an equivalent.

On appeal, the Petitioner contends the Director did not consider the entire record and it erred by not accepting the claims within its correspondence—combined with the above listed evidence—as sufficient to satisfy its burden of proof. As part of its discussion of satisfying the preponderance of the evidence standard, the Petitioner noted that when the Director did not accept its claims within correspondence as sufficiently probative to meet the standard of proof, that it took this to mean the

Director was questioning their credibility. The Petitioner also adds to the record the LinkedIn profiles for its personnel, but indicates that it is unable to provide other material such as the pay records for those same personnel due to privacy concerns.

As it relates to the job advertisements, two of the jobs were posted after the Director's RFE and they do not pre-date the petition filing. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). Evidence that the Petitioner creates or posts after the Director issues an RFE is not considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the Director's notice. Therefore, the post-RFE postings hold little probative value. For the job advertisement that predated the petition filing date, it appears this is for a more senior position because the Petitioner required up to three years of experience in finance, technology, or consulting in addition to its claimed qualifying degrees. However, it did not state any experiential requirements for the position in this petition. The Petitioner has not demonstrated that these job advertisements demonstrate that it normally requires a bachelor's degree in a specific specialty, or its equivalent, *for the position* listed in the petition.

Even if we consider the organizational chart, resumes, and LinkedIn profiles collectively, they too do not demonstrate that the Petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. First, this material generally depicts the degrees and experience an individual claims to possess at certain points in their career, but they do not establish the types and levels of degrees that an employer required when it hired each individual. Second, resumes and online profiles are not probative material that demonstrates each individual actually earned the claimed degrees. Although this evidence is not without any evidentiary value, it is not sufficient to establish the claims contained within it.

Finally, as it relates to the credibility of the Petitioner's declarations and claims, we do not consider the Director's statement to be questioning the trustworthiness of their statements. Instead, the need to corroborate statements with evidence that preponderantly supports those statements is common for those filing for this type of immigration benefit. *See Chawathe*, 25 I&N Dec. at 371–72 (discussing how assertions that are not supported by probative material might not meet a filing party's burden of proof). This incorporates the basic tenet that the burden of proof comprises both the initial burden of production (e.g., documents, testimony, etc.), as well as the ultimate burden of persuasion (e.g., establish the degree to which their evidence should persuade or convince). *See* section 291 of the Act; 8 U.S.C. § 1361; *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998).

Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it has not satisfied the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### 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.



Responding to the RFE, the Petitioner provided the same duties it offered in the initial filing adding the percentage of time each function would comprise as the following:

- Analyze economic data and present conclusions 30%;
- Analyze clients' financial and operational performance and build financial models 30%;
- Assist in the preparation of general, industry, and company-specific economic quantitative reports 30%;
- Draft marketing materials and produce other transaction- and execution-related documentation 10%.

Petitioner also provided a general job description as being under the direction of senior bankers, work on multiple projects and transactions at any given time, with primary responsibilities including producing analytical work for clients and supporting the deal process from origination to execution. The petitioner further stated that a candidate will conduct research, prepare reports, or formulate plans to address economic problems. They will collect and process economic and statistical data using sampling techniques and econometric methods and will compile, analyze, and report data to explain economic phenomena and forecast market trends, applying mathematical models and statistical techniques.

The Director determined that the Petitioner's position description was not sufficiently detailed to establish that the position is so complex or specialized as to require the attainment of a bachelor's degree in a specific specialty. In particular, the Director stated that the duties were not described in a manner that was more specialized and complex than those of other financial analyst positions that are not usually associated with a qualifying degree. The Director noted the lack of material from those in the industry, and it concluded that [REDACTED]'s opinion letter did not sufficiently support the Petitioner's claims. On appeal, the Petitioner claims the Director erred by not discussing the "work product" it submitted in the RFE response, they reduced the position to a non-professional role, and they did not accord any weight to its position description in the RFE response. The Petitioner does not discuss how the Director may have erred as it relates to their analysis of the opinion letter under this criterion.

We agree with the Director that the position description is not detailed such that it satisfies this criterion's requirements. We note that significant portions of this general job description above are identical to and appears to have been taken from DOL's O\*NET website for Economists and it does not support the Petitioner's claims 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 qualifying degree under the H-1B program.<sup>4</sup>

Furthermore, the Petitioner included information titled, "Specific Sophisticated Knowledge Required for the role," and it appears the content was largely adopted from other internet sources. For instance, the Petitioner opened its description of discounted cash flow as: "DCF is a valuation method used to estimate the value of an investment based on its expected future cash flows. DCF analysis attempts to

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<sup>4</sup> *Details Report for: 19-3011.00 - Economists*, O\*NET OnLine Archives (May 19, 2022), [https://www.onetonline.org/Archive\\_ONET-SOC\\_2010\\_Taxonomy\\_09\\_2020/link/details/19-3011.00](https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/details/19-3011.00).

figure out the value of an investment today, based on projections of how much money it will generate in the future.” This and the information that followed largely matches the information for this term found on Investopedia; in many instances word-for-word.<sup>5</sup> Other terms and concepts the Petitioner presented as being specialized, complex, and unique to this position’s duties suffer similar shortcomings and can be found on this same and other websites.

While a general description may be appropriate when defining the range of duties that one may perform within an occupation, such a generic description generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing such a position as a specialty occupation, the proffered position’s description must include sufficient details to substantiate that the Petitioner has H-1B caliber work for the Beneficiary, and must adequately convey the substantive work that the Beneficiary will usually perform within the Petitioner’s business operations. Here, the job description from the Petitioner does not sufficiently communicate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level of knowledge in a specific specialty.

We also note significant similarities between the position responsibilities in this petition and those of some of its internal job advertisements that appear to be more senior positions due to their requirement of multiple years of experience. Were those experiential requirements the actual prerequisites for the offered position, those have the potential of increasing the wage level designated on the LCA to a higher wage rate and an increase in the Beneficiary’s compensation in excess of \$12,000.

While on the topic of the wage rate, here the Petitioner designated a Level I position on the LCA. A Level I is the lowest of four assignable wage-levels relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Nevertheless, a low wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a high wage-designation does not definitively establish such a classification. In certain occupations (e.g., physicians or lawyers), a Level I position would still require a minimum of an advanced 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 relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

Such a Level I wage designation does not appear to corroborate the Petitioner’s appellate claims that it has offered the Beneficiary a competitive high-level salary, or that “clearly this is one of the more high-level, demanding, and complex positions in this classification.” Again, a Level I wage rate is the lowest of four possible wage rates and does not reflect the high-level complexities of the position unless the position is much more senior than a Level I wage would reflect. These aspects tend to undermine the Petitioner’s claims relating to the duties and its claims that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a qualifying degree.

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<sup>5</sup> Discounted Cash Flow (DCF), Investopedia (May 19, 2022), <https://www.investopedia.com/terms/d/DCF.asp>.

Still, we will consider the Petitioner's appellate claims. Regarding the work products the Petitioner presented in the RFE response in November of 2020, it is clear from two of the work products that the work postdates the petition filing date and the third product is not marked in a manner to demonstrate that it predated the petition filing date in May of 2020. A petitioner must establish eligibility at the time it files the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). As a result, while this material does carry some value, it does not weigh heavily in the Petitioner's favor to demonstrate that the Beneficiary's role in each of the projects included responsibilities that were so specialized and complex that they required a qualifying degree.

Finally, the Director discussed [REDACTED]'s opinion letter under this criterion and found that it did not sufficiently advance the Petitioner's eligibility claims. On appeal, the Petitioner does not contest the Director's findings relating to that opinion letter under criterion four, nor do they offer additional arguments. Therefore, we will not address the opinion letter under this criterion. *Matter of Valdez*, 27 I&N Dec. 496, 496 n.1, 498 n.3 (BIA 2018) (concluding that a claim is deemed waived when it is not challenged on appeal).

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Therefore, the Petitioner has submitted insufficient evidence to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In summary, the Petitioner has not satisfied any of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### E. Definitional Requirement

The process of demonstrating that a proffered position is sufficient to meet the requirements under the H-1B program includes more than satisfying one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The regulation also requires a petitioner to demonstrate that a petition "involves a specialty occupation as defined in section 214(i)(1) of the Act." 8 C.F.R. § 214.2(h)(4)(i)(B)(2); *see also* 8 C.F.R. § 214.2(h)(1)(ii)(B)(1). This statutory definition states: "the term 'specialty occupation' means an occupation that requires . . . [a] theoretical and practical application of a body of highly specialized knowledge, and . . . 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." (Emphasis added).

First, both the statutory and regulatory definitions mandate that the broader occupation as a whole requires a bachelor's degree in a specific specialty (or an equivalent), at the entry level. *See Itserve All., Inc. v. Cissna*, 443 F. Supp. 3d 14, 39 (D.D.C. 2020) (recognizing that a specialty occupation would encompass a host of jobs, beginning at the trainee level and extending to an expert along with concomitant but differing personal job duties). Consequently, an H-1B approval demands more than simply demonstrating that the particular position a petitioner is offering normally requires a bachelor's degree or its equivalent as the minimum for entry under criterion one. A petitioner must also establish that one cannot even enter the broader occupation if they do not possess the qualifying degree (or its equivalent).

Second, we reason that the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) should be read logically as being necessary—but not necessarily sufficient—to meet the statutory and regulatory definition of a

specialty occupation. To otherwise interpret the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) as stating the necessary, but not necessarily sufficient conditions as being adequate to qualify would result in some positions meeting a condition under the criteria, but not under the statutory definition. *See Defensor*, 201 F.3d at 387; *Sagarwala v. Cissna*, 387 F. Supp. 3d at 64.

To avoid this erroneous 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 definition of a specialty occupation. *Vision Builders, LLC v. USCIS*, No. CV 19-3159 (TJK), 2020 WL 5891546, at \*1–2 (D.D.C. Oct. 5, 2020) (finding that an employer must satisfy both the definition of a specialty occupation as well as one of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)). This results in a multi-part analysis to determine whether a particular position qualifies as a specialty occupation. As a result, an H-1B petition cannot be approved unless a petitioner demonstrates that a proffered position satisfies this statutory definition; not even if it demonstrates it has satisfied one of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, were a petitioner to submit sufficient evidence to satisfy one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we would still have to evaluate whether it had also demonstrated that the broader occupation as a whole requires a bachelor's degree in a specific specialty (or an equivalent), even at the entry level. We conclude that in addition to not meeting any of the regulatory criteria, the Petitioner has not demonstrated the position in this petition qualifies as a specialty occupation under the statutory definition.

### III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.