



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

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

In Re: 9872070

Date: SEPT. 28, 2020

Appeal of California Service Center Decision

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

The Petitioner, a real estate company, seeks to temporarily employ the Beneficiary as a “business 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 of the California Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as a specialty occupation.

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*. *See 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 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). 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. THE PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as a business analyst. The Petitioner provided job descriptions for the proffered position which identified the primary duties and responsibilities of the Beneficiary, along with the percentage of time to be devoted to each duty.<sup>1</sup> The Petitioner indicated that the minimum entry requirement for the proffered position is a bachelor’s or master’s degree, or equivalent, in business administration.<sup>2</sup>

## 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.<sup>3</sup> Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>4</sup>

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<sup>1</sup> For the sake of brevity, we will not quote the job descriptions; however, we have closely reviewed and considered them.

<sup>2</sup> We note that the Petitioner’s minimum degree requirements fluctuate throughout the record. The Petitioner indicates in its initial support letter that the proffered position requires at least a master’s degree in business administration, but amends that requirement to a minimum of a bachelor’s degree in business administration in response to the Director’s request for evidence. On appeal, the Petitioner again states that a minimum of a master’s degree in business administration is required. No explanation for these discrepancies was provided.

<sup>3</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>4</sup> 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.

## A. Degree Requirements

Preliminarily, we note that the Petitioner's degree requirements are insufficient to qualify under the H-1B program. The Petitioner states that at least a bachelor's (or master's) degree in business administration would be sufficient to enter into the position. We note generally that a claimed entry requirement for at least a bachelor's degree, or equivalent, in business administration, without more, is inadequate to establish that the proffered position qualifies as a specialty occupation.<sup>5</sup> A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position. Thus, the mere requirement of a general degree, such as business administration, without further specification, does not establish the position as a specialty occupation.<sup>6</sup>

Therefore, if a bachelor's (or master's) degree in business administration is sufficient to enter into the proffered position, it cannot be concluded that the proffered position requires anything more than a general bachelor's degree. Accordingly, the proffered position does not qualify under the definition of a specialty occupation and the appeal must be dismissed on this basis alone. Even setting aside the foregoing analysis, we still conclude that the proffered position is not a specialty occupation because the evidence of record does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

## B. First Criterion

We turn first to 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. To inform this inquiry, we will consider the information contained in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses.<sup>7</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Management Analysts," corresponding to the Standard Occupational Classification (SOC) code 13-1111.<sup>8</sup>

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<sup>5</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 combined with relevant education, training, and/or experience could, 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.

<sup>6</sup> *Royal Siam Corp.*, 484 F.3d at 147 (a general-purpose bachelor's degree in business may be a legitimate prerequisite for a particular position, but such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation). See also *Irish Help at Home LLC v. Melville*, No. 13-cv-00943-MEJ, 2015 WL 848977 (N.D. Cal., Feb. 24, 2015), *aff'd* 679 Fed. App'x 634 (9th Cir. 2017).

<sup>7</sup> We do not 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 we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, 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.

<sup>8</sup> The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services (USCIS) to demonstrate

Although the *Handbook* states that “[a] bachelor’s degree is the typical entry-level requirement for management analysts,” it also states that “common fields of study include business, management, economics, accounting, finance, marketing, and psychology.”<sup>9</sup> Based on the wide range of degrees the *Handbook* indicates is acceptable for entry into this occupation, the *Handbook* does not support the conclusion that a bachelor’s or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into a management analyst position.

In addition, the *Handbook* confirms that a general-purpose bachelor’s degree (e.g., a bachelor’s degree in business, with no further specialization) would adequately prepare an individual to perform the duties of these positions. Although a general-purpose bachelor’s degree, such as a degree in business, 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.<sup>10</sup> Therefore, the *Handbook*’s recognition that a general, non-specialty field of study in business is sufficient for positions located within this occupational category strongly suggests that a bachelor’s degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

In its response to the Director’s request for evidence (RFE), the Petitioner referenced the DOL’s Occupational Information Network (O\*NET) summary report for “Management Analysts,” listed as SOC code 13-1111. The summary report provides general information regarding the occupation; however, it does not support the Petitioner’s assertion that the position is a specialty occupation. Specifically, the O\*NET does not establish that the degree must be in any specific specialty.<sup>11</sup>

Similarly, the Petitioner’s reliance on *Tapis Int’l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) and *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) is also misplaced. 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,

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that it will pay the Beneficiary the higher of either the prevailing wage for the occupational classification in the “area of employment” or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>9</sup> Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Management Analysts, <https://www.bls.gov/ooh/business-and-financial/management-analysts.htm> (last visited Aug. 14, 2020).

<sup>10</sup> See *Royal Siam Corp.*, 484 F.3d at 147.

<sup>11</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

and that this language indicates that the degree does not have to be a degree in a single specific specialty.<sup>12</sup> 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 conclude, 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.

The Petitioner also cites to *Residential Finance*, 839 F. Supp. 2d 985, 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.” As previously discussed, 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. Again, 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, 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. Section 214(i)(1)(B) of the Act (emphasis added). For the previously discussed 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.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis* or *Residential Finance*. 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.*

The Petitioner also provided a list of several of our non-precedent decisions in which we determined that the occupations proffered in those matters qualified as a specialty occupation. The Petitioner has

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<sup>12</sup> In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in disparate fields, such as 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. Section 214(i)(1)(B) of the Act (emphasis added).

not furnished copies of those unpublished decisions, nor has it furnished evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions.<sup>13</sup> These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

On appeal, the Petitioner submits a letter from [redacted] Associate Professor of Business Administration at [redacted] University, who concludes that the duties of the proffered position require “at least a Master’s degree in Business Administration or a related field.” We carefully evaluated the professor’s assertions in support of the instant petition but, for the following reasons, determined the letter does not have significant weight in this matter.

The professor does not discuss the duties of the proffered position in any substantive manner beyond what was detailed in the Petitioner’s letter. Rather, he quotes, then paraphrases, the duties and description of tasks provided by the Petitioner. Like the Petitioner, he opines that the proffered position requires at least a master’s degree in business administration, without specifying any particular concentration for this broad-based, general degree

As previously noted, even if established by the evidence of record, the requirement of a bachelor’s degree in business administration is inadequate to establish that a 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent. As explained above, we interpret 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. We have consistently stated that, although a general-purpose bachelor’s degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

Moreover, the professor’s conclusion does not acknowledge or discuss other methods that appear to be readily available to perform the duties of the position, such as a bachelor’s degree in management, economics, accounting, finance, marketing, or psychology, as indicated by the *Handbook*. The lack of cogent analysis specific to nature of the Petitioner’s position strongly suggests that the professor

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<sup>13</sup> 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.

was asked to confirm a preconceived notion as to the required degree, not objectively assess the proffered position and opine on the minimum bachelor's degree required, if any.

For the reasons discussed, we find that the opinion letter provided lends little probative value to the matter here. As a matter of discretion, we may 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, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”). For the sake of brevity, we will not address other deficiencies within the professor's analyses of the proffered position.

In the instant matter, the Petitioner has not provided sufficient documentation from a probative, authoritative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

### C. 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 concentrates on 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. 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) (considering these “factors” to inform the commonality of a degree requirement)).

As previously discussed, the Petitioner has not established that an authoritative source reports at least a bachelor's degree in a specific specialty, or its equivalent is required for the proffered position, and we incorporate our previous discussion on this matter. In addition, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement.

Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

In support of this prong, the Petitioner submitted job advertisements from other organizations in its industry. The Petitioner asserts that all the advertisements satisfy the three main elements that the degree requirement is common: (1) to the industry, (2) among similar organizations, and (3) in parallel positions. 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). 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.

The Director noted deficiencies with most of the job postings. For example, the Director found that while some of the postings did not identify a specific specialty, they likewise did not limit the field of study to a particular field but rather allowed for a wide variety of fields. Specifically, the Director noted that many of the postings merely stated a "preference" for a bachelor's degree as opposed to a minimum requirement. The Director determined that the mere preference for a bachelor's degree was not sufficient, and the indication in several postings that any bachelor's degree would be accepted was too broad to demonstrate the degree requirements were in a specific specialty.

Upon review, we reach the same determinations as the Director. The job postings are general and vague, and therefore it is unclear whether the advertising organizations are similar to the Petitioner and whether the duties identified in the advertised position equate to the duties and functions of the offered position. Additionally, the mere preference for a bachelor's degree in the majority of the postings, without further specification, does not equate to a routine requirement for a specialty degree for parallel positions within the Petitioner's industry. Finally, some postings accept a general degree in business/business management, which again is a broad field and further undermines the claim that the proffered position is a specialty occupation.<sup>14</sup>

Moreover, the Petitioner did not provide any independent evidence as to how representative these particular job advertisements are of the particular advertising employers' recruiting history for the types of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employers' actual hiring practices.<sup>15</sup>

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<sup>14</sup> Even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

<sup>15</sup> As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.



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. Thus, the Petitioner has not satisfied the first 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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. However, the Petitioner has not demonstrated how the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them.

Specifically, the record contains varying requirements for the proffered position. In its support letter, the Petitioner initially stated that the position requires at least a master's degree in business administration. In response to the RFE, the Petitioner claimed that at least a bachelor's degree in business administration was sufficient. On appeal, the Petitioner reverts back to its claim that at least a master's degree in business administration is required. However, it submitted job advertisements which did not require a degree at all, but merely expressed a "preference" for a degree. Moreover, several of the postings which required a degree would accept degrees in various fields including accounting, accounting systems, real estate, business management, and finance. The record contains no explanation for varying degree and experience requirements. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The Petitioner claims that the Beneficiary is well qualified for the position, and references his 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 submit information relevant to a detailed course of study leading to a specialty degree and establish how such a curriculum would be necessary to perform the duties it believes are so complex and unique. While some 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 proffered position's duties.

The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

#### D. 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*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.* 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.

We note the Petitioner's assertion that it requires a degree in business administration for the position. Our review of the record, however, reveals no evidence of the Petitioner's past or current hiring practices for the proffered position. On appeal, the Petitioner does not address or contest the Director's finding under this criterion and does not make any further assertions regarding its past recruitment and hiring practices. Without more, the Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### E. 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.

As discussed, neither the *Handbook* nor another authoritative source indicates that a bachelor's degree in a specific specialty, or the equivalent, is normally required for positions located within this occupational category, and the Petitioner's description of the proffered position's duties provides insufficient information to determine whether the nature of the position is so specialized and complex that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Nevertheless, we have again reviewed the duties of the proffered position in full. The descriptions do not detail the specialized and complex nature of specific duties the Beneficiary will perform. Although some tasks may connote a requirement of familiarity with general business principles, the record is insufficient to establish that the duties require anything more than a few basic courses and a broad educational background. While a few such courses may be beneficial in performing certain duties of the position, the Petitioner, who bears the burden of proof, 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 Petitioner does not develop relative specialization and complexity as an aspect of the proffered position. The proposed duties do not include a meaningful discussion of what the Beneficiary will actually be required to do in the proffered position.

and how those duties require the theoretical and practical application of a body of highly specialized knowledge. The Petitioner has not established that the proffered position is more specialized and complex or unique than a management analyst position that requires only a general bachelor's degree.

We again reviewed [redacted]'s position evaluation wherein he opines that the duties of the proffered position require at least a master's degree in business administration. The professor repeats the Petitioner's description of duties and draws this concludes with no substantive analysis regarding the manner in which the duties of the position are specialized and complex.

Again, the professor's conclusion does not acknowledge or discuss other methods that appear to be readily available, such as a general bachelor's degree or a bachelor's degree in a number of disparate fields, to perform the duties described. Again, as a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. For the reasons discussed, the position evaluation proffered here does little to assist in establishing that the proposed position is specialized and complex or unique and satisfies the statutory and regulatory definitions of a specialty occupation.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform the duties, the Petitioner has not sufficiently explained how the identified tasks elevate the position to one so specialized and complex that a specialty degree is required to perform them. We conclude that the Petitioner has not established that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

#### IV. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.