



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

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

In Re: 28510990

Date: NOV. 14, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to temporarily 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 Director of the Vermont Service Center denied the petition, concluding the record did not establish that the proffered position is a specialty occupation. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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

The Act at section 214(i)(1), 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires: (A) the 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) is a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) adds a non-exhaustive list of fields of endeavor to the statutory definition. And the regulation at 8 C.F.R. § 214.2(h)(4)(iii) requires that the proffered position must also 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.

The statute and the regulations must be read together to make sure that the proffered position meets the definition of a specialty occupation. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. And Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). Considering the statute and the regulations separately could lead to scenarios where a petitioner could obtain approval by satisfying a regulatory factor, but not the definition of specialty occupation contained in the statute. *See Defensor v. Meissner*, 201 F.3d 384, 387 5th Cir. 2000). Reading the regulatory criteria together with the statute gives effect to the Act's clear statutory intent. *See Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act*, 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991).

So we construe the term "degree" in 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position supporting the statutory definition of specialty occupation. *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").¹ USCIS' application of this standard has resulted in the orderly approval of H-1B petitions for engineers, accountants, information technology professionals and other occupations, commensurate with what Congress intended when it created the H-1B category.

And job title or broad occupational category alone does not determine whether a particular job is a specialty occupation under the regulations and statute. The nature of the Petitioner's business operations along with the specific duties of the proffered job are also considered. We must evaluate the employment of the individual and determine whether the position qualifies as a specialty occupation. *See Defensor*, 201 F.3d 384. So a Petitioner's self-imposed requirements are not as critical as whether the position the Petitioner offers requires the application of a theoretical and

¹ This is a long-standing interpretation, and it is in line with the former Immigration and Naturalization Service's (INS) understanding of the matter when it drafted this regulatory definition. INS specifically addressed the "specific specialty" requirement at that time as follows:

Thirty-one commenters suggested that the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations. Most of these commenters suggested that the definition should be expanded to include those occupations which did not require a bachelor's degree in the specific specialty. The definition of specialty occupation contained in the statute contains this requirement. Accordingly, the requirement may not be amended in the final rule.

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991).

practical body of knowledge gained after earning the required baccalaureate or higher degree in the specific specialty required to accomplish the duties of the job.

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. THE PETITIONER AND ITS PROFFERED JOB

The Petitioner is offering the Beneficiary the position of associate (management consultant). The petition included a labor condition application (LCA) certified for a position located within the “Management Analysts” occupation category corresponding to the Standard Occupational Classification code 13-1111.00. The proffered job’s duties appear to generally align with the duties of positions located within the “Management Analysts” occupational category. In its response to the Director’s request for additional evidence (RFE), the Petitioner submitted a brief in support to establish that the proffered position met all four of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and referenced evidence submitted earlier in these proceedings.²

We note the Petitioner, [REDACTED] United States, identifies itself as “an international management consulting firm whose function is to assist corporations, government entities and charitable organization worldwide to solve major business problems.” We also acknowledge its self-identification as “the [REDACTED]³ of the management consulting industry” and claimed superlative of enjoying a “reputation as the [REDACTED]

[REDACTED] The Petitioner states that it employs “hundreds of Management Consultants at each of its offices” who all follow a common career path culminating in election to senior partner if eligible. As stated above, the Petitioner states that it services clients across a vast range of “corporations, government entities and charitable organizations” worldwide.

Because of its large census of similarly engaged employees and self-professed wide range of clients, the Petitioner’s requirements for the associate (management consultant) position appear accordingly broad and disparate. The Petitioner stated in its support letter that the associate (management consultant) position requires “completion of at least Bachelor’s-level program in a specific, directly related quantitative and analytical field...such as Business, Law, Economics, and Engineering or other fields that are directly related to the role’s responsibilities and industry specialty, such as Business Administration.”

But the Petitioner’s requirements as stated in the petition, appropriate as these requirements may be in the context of the Petitioner’s business, are incompatible with the statutory and regulatory framework of the H-1B program on three separate bases, with each one independently requiring denial of the petition.

² While we may not discuss every document submitted, we have reviewed and considered each one.

³ [REDACTED]

III. ANALYSIS

The statutory and regulatory framework of the H-1B program offers no alternative other than denial of the petition before us today. The Petitioner's acceptance of a general business or business administration degree without specialization does not satisfy the statutory and regulatory definition of specialty occupation, and that acceptance alone mandates the petitioner's denial. And even if we were to set this issue to the side, we would still conclude that the Petitioner's acceptance of a bachelor's degree from the wide variety of fields is specifies also precludes the Petitioner from satisfying both the statutory and regulatory definition of specialty occupation. That deficiency alone would also mandate the petition's denial. Finally, even if we were to set both of those fatal deficiencies aside, we would still conclude that the evidence the Petitioner has submitted into the record does not demonstrate that performance of the proffered job's duties requires an individual with a bachelor's degree in a specific related specialty, or the equivalent under any of the criteria contained at 8 C.F.R. § 214.2(h)(4)(iii). We will discuss each of the independent bases requiring denial of the petition in turn below.

A. General Degree Requirement.

The proffered position does not meet the statutory or regulatory definition of the term "specialty occupation." The Petitioner has not satisfied the requirement that the proffered position require the theoretical and practical application of a body of specialized knowledge and that the position requires attainment of a bachelor's degree in the specific specialty to perform the job duties. The record of proceedings contains the Petitioner's stated requirements for the proffered position. The Petitioner states that it accepts among numerous other degrees a bachelor's degree in business and business administration, with no further specialization, as a minimum qualification for entry into the proffered position.⁴

Historically, the agency has consistently disfavored general purpose bachelor's degree in business administration with no additional specialization in accordance with the statutory and regulatory requirements. For example in *Matter of Ling*, 13 I&N Dec. 35 (Reg'l Comm'r 1968), the agency stated that attainment of a bachelor's degree in business administration alone was insufficient to qualify a foreign national as a member of the professions pursuant to section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). In *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988), the agency clarified that a requirement for a degree with a generalized title, such as business administration, without further specification, was insufficient to qualify the position as one that is professional upon an examination of the nature of the position itself pursuant to section 101(1)(32) of the Act. And in *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988), a vice president for

⁴ The Petitioner describes the relative benefits of a master's in business administration to the Petitioner's work and its majority representation amongst employees situated in roles same or similar to the associate (management consultant) role the Petitioner offers here. We dispute none of that. But for purposes of establishing eligibility for the benefit sought via this petition, it is unpersuasive because the Petitioner's proffered job does not require a master's in business administration as a minimum requirement for entry into the position. In other words, these benefits the Petitioner describes are, for purposes of this petition, irrelevant.

manufacturing in a textile company was not deemed to be a professional position because an individual holding a general degree in business, engineering, or science could perform its duties.

When Congress revamped the H-1B program as part of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, it shifted its focus from the prior H-1B standard's examination of whether a proffered position was professional and instead required petitioners to demonstrate that a proffered position was a specialty occupation. Even after this adjustment, the agency's concerns with a general-purpose bachelor's degree in business administration with no additional specialization continued. *See e.g. Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); *2233 Paradise Road, LLC v. Cissna*, No. 17-cv-01018-APG-VCF, 2018 WL 3312967 (D. Nev., July 3, 2018); *XiaoTong Liu v. Baran*, No. 18-00376-JVS, 2018 WL 7348851 (C.D. Cal., Dec. 21, 2018); *Parzenn Partners v. Baran*, No. 19-cv-11515-ADB, 2019 WL 6130678 (D. Mass., Nov. 19, 2019); *Xpress Group v. Cuccinelli*, No. 3:20-CV-00568-DSC, 2022 WL 433482 (W.D.N.C. Feb. 10, 2022).

As the First Circuit Court of Appeals explained in *Royal Siam*, 484 F.3d at 147:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify granting of a petition for an H-1B specialty occupation visa. *See e.g., Tapis Int'l v. INS*, 94 F. Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F.Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.⁵

The Petitioner forcefully advances its contention that “a position accept[ing] degrees in...a more generalized field such as Business Administration is not disqualifying for the H-1B visa category.” This is categorically incorrect. If a position is a “specialty occupation” under the statute and regulations, it is one which involves a “body of highly specialized knowledge” attained after completing a bachelor's degree or higher in a “specific specialty.” A general degree requirement like a bachelor's degree in business or business administration, standing alone without any further specialization, is not a requirement for a degree in a specialty.⁶ And this excludes any proffered position accepting such a degree as a minimum requirement for entry into the position, like the Petitioner associate (management consultant) position, from consideration as a specialty occupation.

⁵ *But see India House, Inc. v. McAleenan*, 449 F.Supp 3d 4 (D.R.I. 2020). In *India House* the court distinguished *Royal Siam* on factual grounds but did not dispute its central reasoning that a position whose duties can be fulfilled by an individual with a general-purpose bachelor's degree in business administration is not a specialty occupation. Instead, it distinguished *Royal Siam* on factual grounds. Here, the Petitioner specifically recognizes an unspecialized bachelor's degree in business and business administration as being one of many degrees it considers as providing an adequate preparation to perform the duties of the proffered position.

⁶ *But see InspectionXpert Corporation v. Cuccinelli*, 2020 WL 1062821 (M.D.N.C. Mar. 5, 2020). In *InspectionXpert* the court considered whether the educational requirement of an engineering degree without further specialization was too broad for a quality engineer position. Whilst the court found that a generalized engineering requirement did comprise a specialty, it also distinguished engineering from other broad degrees, such as liberal arts or business administration degrees. *Id.* at *24. Our holding today therefore does not conflict with *InspectionXpert*.

A requirement of a bachelor's degree in business or business administration without further specialization is so broad that it could apply to a position in finance as well as general business operations and management in a variety of endeavors. So it cannot provide an individual with the "body of highly specialized knowledge" required to perform the duties of a specialty occupation. And the Petitioner spotlights this when it contends that "Business Administration degrees can indeed include several sub-concentrations, such as operations, strategy, management, finance or marketing; however, the majority of Business Administration degree programs provide an individual with the same body of highly specialized quantitative, analytical, financial and operations knowledge..." We agree with that statement. But if a generalized degree like business administration provides the knowledge required to perform the duties of the position along all its broad sub-concentrations, like strategy, then it follows that the knowledge common amongst the fields is general. So a bachelor's degree in business administration with no further specialization is not a degree in a specific specialty. And the fact that the Petitioner would accept such a degree as a minimum qualification for entry to the proffered position does not satisfy the statutory and regulatory definitions of specialty occupation. On that basis alone, we could dismiss the appeal in alignment with longstanding agency policy without any further discussion.

B. Wide and Disparate Acceptable Degree Field Range

Even if we were to leave to the side the dispositive issue of the Petitioner's acceptance of a business administration degree with no further specialization, we would still conclude that the Petitioner's acceptance of a bachelor's degree from the wide variety of fields it specifies would preclude the Petitioner from satisfying both the statutory and regulatory definition of specialty occupation. The record of proceedings reflects that along with a bachelor's degree in business or business administration with no further specialization, the Petitioner would also accept other varied bachelor's degrees in law, economics, engineering, or other related "quantitative or analytical field[s]" for entry into the proffered job.

The Director correctly found this acceptable range of degrees too wide and denied the petition. The Petitioner's grouping of business or business administration with no further specialization in combination with law, economics, and engineering is not adequately supported in the record with evidence highlighting its composition as collectively forming a singular specialty a body of highly specialized knowledge. In fact, the Petitioner clarifies that "the range of skills in areas such as quantitative analysis, logical reasoning, and strategic thinking" is common across the business, business administration, law, economics, and engineering fields it accepts as a minimum baccalaureate level educational credential for entry into the occupation. The Petitioner's clarification of skills in combination with its mass grouping of degree fields constitutes a range so broad that it cannot compose a "specialty" required to perform the duties of a "specialty occupation." When the desired skills of "quantitative analysis," "logical reasoning," and "strategic thinking" can be gained from any number of seemingly unrelated degrees, spanning from hard sciences such as engineering to humanities-adjacent fields such as "law," the only conclusion can be that these skills are fundamental and not specialized. In fact, numerous unrelated specialties would fall within the Petitioner's minimum educational requirements with the Petitioner's desired range of skills. This could lead to a scenario where the Petitioner would accept an individual with any bachelor's degree so long as it provided the Petitioner's desired range of quantitative skills. Such a position would not be considered specialized. *See Caremax v. Holder*, 40 F.Supp.3d 1182, 1187-88 (N.D. Cal. 2014) ("A position that requires

applicants to have any bachelor's degree, or a bachelor's degree in a large subset of field, can hardly be considered specialized.”). The record as it is presently composed does not establish how this range of skills could form a body of highly specialized knowledge or a specific specialty.

On appeal, the Petitioner contends that the Director applied an incorrect legal standard when they denied the petition because caselaw in *Residential Finance Corporation v. U.S. Citizenship & Immigration Servs.*, 839 F.Supp.2d 985 (S.D. Ohio 2012) supports a conclusion that its wide range of degrees can constitute a specialty required to perform the duties of a specialty occupation. The Petitioner's arguments are not persuasive.

The court in *Residential Finance* was considering whether the statute required that only one specific degree be accepted for a position to be specialized. It does not stand for the proposition that a wide variety of degrees can constitute a specialty required to perform the duties of a specialty occupation. Quite the opposite, *Residential Finance* found for the Plaintiff only after determining that the Plaintiff had established their minimum requirements capture the necessity of a baccalaureate degree in a specialized course of study in a field related to the proffered job's duties as a minimum. *Residential Finance Corporation*, 839 F.Supp.2d at 996. In other words, the court in *Residential Finance* did not state that a Petitioner can cobble any grouping of degree fields and call it a specialty, as the Petitioner seems to imply. To the contrary, the plaintiff in *Residential Finance* prevailed because the court determined that the plaintiff's grouping of degree fields was a specialty. The foundational principle leading to the holding in *Residential Finance* is also present in several other cases, including cases the agency lost on other grounds. In *Relx v. Baran*, 397 F.Supp.3d 41 (D.D.C. 2019), the court determined that a specialty occupation existed only after determining that the occupation required a specialized course of study the plaintiff had earned. *Relx*, 397 F.Supp.3d at 55. In *CARE v. Nielsen*, 461 F. Supp.3d 1289 (N.D. Ga. 2020) the court stated that most occupations in the proffered job's occupational classification require a bachelor's degree as a minimum educational requirement for entry but only after recognizing that the statute and regulation must be read together to require a baccalaureate or higher education in a specific specialty. *CARE*, 461 F. Supp.3d at 1304.

In its appeal, the Petitioner notes that the “fact that a position accepts degrees in various fields...is not disqualifying for the H-1B visa category.” We agree, but the issue here is not that the Petitioner would accept degrees in various fields. The issue here is that the Petitioner's stated spectrum of acceptable degrees is too broad to support a finding that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent. We interpret the statutory “the” and the regulatory “a” to mean a singular specialty but we do not so narrowly interpret the statute and regulation such that multiple closely related fields of study would not constitute a specialty to perform the duties of a related specialty occupation. In general, 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 provided the specialties are closely related such that they constitute a common specialty required to perform the duties of the position. If they constitute a common specialty, then the required “body of highly specialized knowledge” would essentially be the same. If the required degree fields do not constitute a common specialty, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent).” A minimum entry requirement that did include disparate fields of study, such as philosophy and engineering for example, would require a petitioner

to establish how each field is directly related to all the duties and responsibilities of the particular position. Section 214(i)(1)(B) of the Act (emphasis added).

So there is no requirement in the statute for the required education to consist of one specific degree or major but there must be a close relation between the required specialized studies to constitute a common “specialty” and that “specialty” must be related to the duties of the position as supported by the case law cited by the Petitioner in its appeal. When a petitioner would accept a bachelor’s degree from a wide variety of seemingly unconnected fields, like the range of fields the Petitioner presents here, it cannot establish that the fields constitute a “specialty” if it does not establish how each accepted and specific field of study is directly related to each another and to the duties and responsibilities of the particular position. The record as it is currently constituted does not support a conclusion that the Petitioner’s mass grouping of degree-fields is sufficiently narrow to conclude that it comprises a “specialty” required to perform the duties of the “specialty occupation.”

C. The Petitioner’s Assertions on Appeal

The record contains the Department of Labor’s *Occupational Outlook Handbook* (*Handbook*), *LinkedIn* screenshots reflecting the credentials of individuals employed by competitors, and a chart naming its current employees, its employee’s job titles, and its employee’s educational credentials to support the Petitioner’s assertion that its proffered position requires a bachelor’s degree in a specific field of study comprising a body of specialized knowledge or a specialty required to perform the duties of the position. But, as we discuss below, the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) cannot be satisfied without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge.

The *Handbook* reports that “management analysts typically need at least a bachelor’s degree and several years of work experience.” See 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>. Here the Petitioner does not indicate that its proposed position requires any work experience. And the *Handbook* also indicates that as management analysts address a range of topics, “many fields of study provide a suitable educational background.” *Id.* The *Handbook* identifies common fields of bachelor’s degree study for a management analyst position as including the general field of business, natural resources, computer and information technology, and mathematics. Thus, the *Handbook* recognizes this occupation as multidisciplinary, as well as acknowledging that a general business degree (without additional specialization) is a common field of study. As the *Handbook* does not identify a specific discipline required to perform the duties of the occupation, it does not support a conclusion that these positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor’s degree in a specific specialty, or its equivalent. Nevertheless, we understand that the *Handbook* is only one source that can be used to assist in demonstrating whether a particular occupation may be a specialty occupation. The Petitioner may present other sources to establish that a specific degree is normally the minimum requirement for entry into the position or may establish that its particular position requires a bachelor’s level, or other, degree in a specific discipline or fields of disciplines constituting a specialty or theoretical or practical body of specialized knowledge required to perform the duties of the position.

The Petitioner has not submitted sufficient evidence regarding its particular position to satisfy the requirements necessary to establish the position is a specialty occupation.

The Petitioner also highlights “hundreds of *LinkedIn* profiles of employees of [redacted] two main competitors, [redacted] and [redacted] filling “consultant” roles. The Petitioner avers that this evidence demonstrates that these roles parallel its associate (management consultant) position. It further asserts that this evidence supports its contention that requirements similar to those it has established for its proffered position are widely held across its industry. To be relevant for consideration, the Petitioner’s evidence must demonstrate that its competitors’ employees occupy “parallel positions.” The Petitioner indicates that the commonality of its proffered job’s title with the job title of the positions of its competitor’s employees establishes that the two positions are parallel. We do not agree. We do not consider a job title to be determinative to demonstrating the similarities between two positions. The contents of the current record do not contain any indication of the job duties, objectives or minimum requirements of the jobs described on the *LinkedIn* pages of the Petitioner’s competitors’ employees. A comparison and evaluation of the positions without these datapoints is incomplete and therefore insufficient to a demonstration of eligibility.

And the chart the Petitioner provided purporting to source directly from the Petitioner’s “HR records” is nothing more than a list of employees, the employee’s job titles, and the employee’s possession of master’s degree in business administration. In the first instance, the Petitioner’s minimum requirement for the associate (management consultant) position does not include a master’s degree in business administration; the minimum educational requirement as identified above is a bachelor’s degree in business or business administration with no further specialization, and other varied bachelor’s degrees in law, economics, engineering, or other related “quantitative or analytical field[s].” Whilst its chart may indicate the Petitioner’s preference for a master’s degree in business administration, it does not demonstrate the Petitioner’s requirement of a bachelor’s degree in a specific specialty, or its equivalent, related to the performance of the position’s job duties. 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 so long as the petitioning entity created a token degree requirement. *Id.* Here, the evidence in the record simply supports the Petitioner’s preference for individuals with master’s degrees in business administration in its associate (management consultant) position. The Petitioner does not provide any additional evidence or documentation which could have helped evaluate its eligibility under this criterion, such as current or prior job announcements, a list of current or former employees with position titles like the proffered position’s title and degree titles, or copies of current or former employee’s paystubs, degree, and resumes.

The Petitioner submitted what it described as a “detailed explanation of an Associate (Management Consultant) role from initiation to conclusion of a specific project.” The Director considered the Petitioner’s “detailed explanation,” and correctly concluded that it did not establish that the Petitioner’s requirements for its associate (management consultant) position comprised a specialty or required application of a theoretical and practical body of specialized knowledge gained after earning a baccalaureate degree in a field or fields comprising the specialty to perform the proffered job duties. We agree. Specifically, the Petitioner’s “detailed explanation” broadly or generally states at numerous

points that nothing more than a “Bachelor’s degree in a directly related field of study” is required to perform the job duties.⁷ The “detailed explanation” therefore does not correspond to the requirements the Petitioner has expressed for the proffered position in the petition. Whilst the Petitioner stated that it services clients across a vast range of “corporations, government entities and charitable organizations” worldwide, there is no evidence in the record as it is currently composed which would reflect what client or client category the associate (management consultant)’s job duties would support. This omission is important because had the Petitioner included it, we might have been able to evaluate whether the Petitioner’s job requirements compose a specialty or constitute a body of theoretical or practical knowledge gained from a baccalaureate level education or its equivalent applied to perform the duties of a specialty occupation. The Petitioner’s appeal brief appears to obliquely reference business administration as an industry specialty, but the record does not sufficiently clarify that business administration is the field within which the Petitioner’s associate (management consultant) would perform their job duties. Even if business administration were the industry specialty for the Petitioner’s associate (management consultant) position described in this petition, we would conclude the record does not support that performance of the associate (management consultant)’s duties require the application of a theoretical or practical body of knowledge composing a specialty related to the job’s duties because of the Petitioner’s acceptance of a general bachelor’s degree in business or business administration without specification and the wide, disparate, and unconnected degree fields it would also accept at a baccalaureate or equivalent level for entry into the position.

The Petitioner’s RFE response refers to an analysis of positional requirements (evaluation) to argue that the range of fields it requires for the position is not disparate, and that the fields constitute a specialty closely related together and with the duties of the position. 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). But an opinion statement has less weight where there is cause to question or doubt the opinion, or if it is not in accord with other information in the record. The submission of expert opinion letters is not presumptive evidence in any event. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA, 2008).

The Petitioner’s reliance on this evaluation to supports its argument that the range of fields of study it accepts is closely related is misplaced. The evaluation does not provide a strong enough basis to understand how the wide range of degrees accepted by the Petitioner are related to one another to form a body of specialized knowledge. Nor does it show how that body of specialized knowledge relates to the duties of the proffered job.⁸ The writer of the evaluation formulated their opinion based on their knowledge of the wider field of business management, economics and finance gained as a professor of marketing at [redacted] College in [redacted] New York. The writer has taught courses in business, media,

⁷ In other words, at some points in the record the Petitioner seems to be stating that a bachelor’s degree in *any* field of study—not even limited to the wide-ranging catalogue of degrees we discussed earlier—would suffice. Not only do these statements lend yet more weight to our determination that the proffered position does not require a bachelor’s degree in a specific specialty, but they also introduce inconsistencies into the record. And given that the position’s actual requirements are central to the issue of whether it is a specialty occupation, they are significant inconsistencies that strike directly at the heart of the Petitioner’s claim. Given our determination on the merits that this position is not a specialty occupation, we will not explore the ramifications of this inconsistency on the petition’s overall credibility further, other than to advise the Petitioner that it should be mindful of this issue in future H-1B filings.

⁸ And even if it did, the Petitioner would still be left with the deficiencies discussed earlier that are inherent to a petition in which a bachelor’s degree in business administration, with no further specialization, is acceptable.

public relations campaign planning, strategic marketing, branding, and market research. They also noted other professional experience and certifications. The writer states that they reviewed copies of a letter issued by the Petitioner outlining the job duties of the position and the required educational background for a candidate to hold the position, a supplemental, detailed job description issued by the Petitioner and the Beneficiary's academic documentation. The writer also referred to their issuance of "thousands of credentials equivalency evaluations" to USCIS. The writer lists the proffered job's duties, the job's academic prerequisites, and attempts to establish the suitability of each required field of study to a selected portion of the proffered job's overall duties. The evaluation also tries to tie in a bachelor's degree in business administration without specialization to the duties of the position and to the other accepted fields of study, concluding that the proffered position fits within the statute and regulations as a "specialty occupation."

We have questions about the sufficiency of the writer's opinion because its conclusions are not in accord with information in the record. For example, the writer references research regarding the issues they discuss in their opinion but does not identify any of this research in the record along with their opinion to bolster their conclusions. The writer also refers to their evaluation of professional positions of employment that they relied on in forming their opinion. However, it is unclear from the record what positions the writer evaluated in making their opinion and whether the evaluated positions correspond to the proffered position. The evaluation is based on unspecified research authority and position evaluations not present or described in the record of proceedings. Even if we put aside our doubts about the basis for the writer's opinions, the writer's conclusions of each degree field's applicability to the proffered job duties are selectively applied to only a small portion of the overall job duties. The record does not support how each acceptable field of study is directly related to all the duties and responsibilities of the proffered job. The record does not support the writer's claims of familiarity with the Petitioner, nor does it adequately substantiate how consultation with recruiters and academic advisor and opportunities to observe students and learn their educational backgrounds corresponds to evaluating whether a particular position is a specialty occupation within the framework set by the applicable regulations and the statute. Moreover, the writer's expertise appears to be in the field of marketing and public relations. The record does not indicate how the writer's specific expertise relates to the Petitioner's proffered job. And the evidence in the record does not convincingly corroborate the writer's claims that business, media, public relations campaign planning, strategic marketing, branding, and market research focused teaching renders them qualified to provide an opinion about seemingly unrelated fields such as law, economics, and engineering and whether they qualify someone to perform the duties of the associate (management consultant) position or are related to one another such that they comprise a specialty required to perform those duties.

Whilst we held in *Chawathe* that the standard of proof in immigration proceedings is the preponderance of the evidence, the burden of proof is always on the petitioner. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). A petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. When, as here, a petitioner has not met the burden of persuasion by a preponderance of the evidence because its evidence is not material, relevant, or

probative it follows that it has not demonstrated eligibility for the benefit that it seeks. So the evaluation is not probative and we decline to assign it any significant evidentiary weight.

We therefore cannot conclude that the proffered position's minimum requirement for entry into the job is anything more than a general bachelor's degree. The Petitioner has not satisfied the statutory definition of a "specialty occupation" at section 214(i)(1)(B) of the Act nor the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii).

Without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge, the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) cannot be satisfied. The supplemental regulatory criteria are read together within the related regulations and the statute as a whole. So, where the regulations refer to the term "degree," we interpret that term to mean a baccalaureate or higher degree in a specific specialty related to the proffered position. *See Royal Siam*, 484 F.3d at 147. The word "degree" is mentioned in each prong of the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4). And where, as here, a baccalaureate or higher degree in a specific specialty is not required as a minimum requirement of entry, it follows that each prong under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) remains unsatisfied. So we will not consider the Petitioner's arguments and the evidence it submits in support of its contention that it satisfies the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

We conclude that the proffered position here is not a specialty occupation because the Petitioner's stated range of acceptable degree fields is too broad to constitute a single specialty required to accomplish the duties of proffered job. The record of proceedings does not establish that the proffered position requires both: (1) the theoretical and practical application of a body of highly specialized knowledge; and (2) the attainment of a bachelor's degree in the specific specialty. The Petitioner has satisfied neither the statutory definition of a "specialty occupation" at section 214(i)(1)(B) of the Act nor the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii). As the Petitioner had not satisfied that threshold requirement, it cannot satisfy any of the supplemental specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4). The Petitioner has not established that the proffered position is a specialty occupation.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.