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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

b2

DATE: **JUL 02 2012**

OFFICE: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and, in response, counsel for the petitioner filed a motion to reopen. The director subsequently dismissed the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on October 2, 2009. On the Form I-129 visa petition, the petitioner describes himself as an enterprise engaged in staffing and recruitment, established in 2004. In order to employ the beneficiary in what it designates as a marketing director position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on January 12, 2010, finding that the petitioner (1) failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions; and (2) failed to establish that the beneficiary is qualified to serve in a specialty occupation position. Counsel for the petitioner subsequently submitted a motion to reopen, which the director dismissed.¹ On appeal, counsel asserts that the director's bases for denial were erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; (5) the Motion to Reopen; (6) the director's Dismissal of the Motion to Reopen; and (7) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

The petitioner stated that it seeks the beneficiary's services as a marketing director, to serve on a part-time basis (16 hours per week) at a salary of \$19.72 per hour (\$16,407.04 per year). In a

¹ The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹ The new facts submitted on motion must be material and previously unavailable, and could not have been discovered earlier in the proceeding. Cf. 8 C.F.R. § 1003.23(b)(3).

In this matter, the director found that the motion to reopen was not timely submitted, and that the petitioner and counsel did not provide any "new facts" and the motion did not contain any "new" evidence. Thus, the director determined that the submission failed to meet the requirements for a motion to reopen. With the appeal, the petitioner and counsel submitted documentation establishing that the motion to reopen was timely submitted.

letter of support dated September 25, 2009, the petitioner provided the following job description of the proffered position:

- Ensure courteous, honest and efficient services to [the] company's present and potential customers coming from various disciplines engaged by [the] corporate business structure[;]
- Research, design, initiate, develop and implement state of the art customer service center to [the] organization's client base[;]
- Apply the latest technology and methodologies in customer relations service which would eventually ensure cost reduction outcome to [the] organization at large[;]
- Formulate procedures, standards and guidelines in handling customer complaints[;]
- Provide, develop and implement promotions and incentives or reward schemes for the organization's professional scouts in the recruitment thrust and strategies[;]
- Coordinate with the Human Resources Department on issues relative to resolution of some technical problems raised by [the] client healthcare facilities based on job performance by field personnel[.]

The petitioner stated that "minimum requirement for the position of Marketing Director is a bachelor's degree in Marketing, Business Administration or [a] related field." The AAO notes that the petitioner's claimed acceptance of a degree in "Business Administration" for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation.

More specifically, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). 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 Associates*, 19 I&N Dec. 558 (Comm'r 1988). To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As will be further discussed in this decision, U.S. Citizenship and Immigration Services (USCIS) interprets the degree requirement

at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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 finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on October 22, 2009. The petitioner responded to the director's RFE by submitting a letter and additional evidence.

From the petitioner's letter in response to the RFE, the AAO extrapolated the following expanded description of the proffered position, annotated with the percentage of worktime that the petitioner estimates would be involved in each of the listed duties:

- I. Ensure courteous, honest and efficient services to [the] company's present and potential customers coming from various disciplines engaged by [the] corporate business structure (10%)
 - Assure that all telephone calls by clients to [the petitioner] are directed to live persons – (2%)
 - Implement the 3 linear telephone greetings by in-house staff in answering calls – (2%)
 - Design a standard procedure of proved efficient and courteous ways of receiving in person visits at any of [the petitioner's] office premises – (2%)
 - Maintain that [sic] appointments with all clients are met in a timely fashion and their issues address promptly – (2%)
 - Advise and require in-house marketers and other employees to use appropriate [the petitioner's] corporate language and identifications in all electronic correspondence to clients – (2%)

- II. Research, design, initiate, develop and implement state of the art customer service center to [the] organization's client base (20%)
 - Coordinate and work closely with IT [information technology] personnel of [the petitioner's] to design and implement communication technology that will facilitate rendition of its service to [the] field of healthcare workers such as paperless or electronic timesheets, per diem and coverage assignments, requests for leave, etc[.] – (7%)
 - Coordinate and work closely with IT [information technology] personnel of [the petitioner's] to design and implement desired communication technology that will facilitate rendition of its

service to [the] affiliated healthcare facilities such as paperless or electronic timesheets, invoices and job orders – (7%)

- Project, estimate and present to Finance Department of [the petitioner's] budgetary requirements for purchase or upgrades of all means of communication with both [the] outsourced healthcare employees and medical facilities – (3%)
- Apply the latest technology and methodologies in customer relations service which would eventually ensure cost reduction outcome to [the] organization at large – (3%)

III. Formulate procedures, standards and guidelines in handling customer complaints (20%)

- Coordinate and work closely with the management of [the petitioner] to help act on complaints by [the] affiliated healthcare facilities against misconduct or unprofessional performance by outsourced medical personnel – (5%)
- Requires that all complaints be processed for prompt investigation and adjudication – (5%)
- Ensure that all administrative means are exhausted before concerned [the petitioner] department or personnel is sanctioned – (5%)
- With the approval of management, act and represent [the petitioner] in discussing issues with concerned facilities – (5%)

IV. Provide, develop and implement promotions and incentives or reward schemes for the organization's professional scouts in the recruitment thrust and strategies (20%)

- Act and represent [the petitioner] in dealing with concerns of [the] professional scouts in matters concerning their commissions or their retention to continue serving the recruitment department – (5%)
- Design ways and means that would encourage [the] professional scouts to refer more healthcare professionals to [the petitioner] such as fair and reasonable commission plan and quota rewards – (10%)
- Coordinate, work closely and present for approval by the management of [the petitioner] budgetary requirements for any rewards scheme before offering to [the] professional scouts – (5%)

V. Coordinate with the Human Resources Department on issues relative to resolution of some technical problems raised by [the] client healthcare facilities based on job performance by field personnel (30%)

- Maintain and ensure sound relationship of [the petitioner] with our client healthcare facilities despite complaints against the field healthcare professionals assigned to work for them – (10%)
- Communicate promptly electronically or otherwise with the complaining client healthcare facility to assure that [the petitioner] will immediately act on the issue – (10%)
- Represent [the petitioner] in discussing findings and actions employed by management relative to the client healthcare facility's complaint – (10%)

The director requested the petitioner submit additional information regarding the proffered position. More specifically, the evidence the petitioner was asked to provide to the director included an organizational chart showing the current positions and the positions that the petitioner seeks to fill. The petitioner was also asked to clarify under whose supervision these employees operate and to describe the educational requirements that the petitioner has established for each position. The director requested the petitioner include a list of its current employees, along with information regarding their educational credentials and job duties. The petitioner was also asked to provide information regarding other individuals who are or have been employed in the proffered position, along with their educational credentials. The director specified that the petitioner must submit documentary evidence to support its assertions. The director stated that "neither workers' resumes nor a petitioner statement will serve as documentary evidence. Documentary evidence may include but is not limited to copies of the employees' degrees. . . ."

The petitioner responded to the RFE by submitting three organizational charts. The first chart is entitled "Table 1.0 – Executive Team." It consists of the president and 14 additional positions, including a "VP – Marketing" but not a Marketing Director position. The VP – Marketing has five direct and indirect subordinates and the VP – Finance has two direct subordinates. The next chart is entitled "Table 1.1 – Marketing Department." It consists of the VP – Marketing and 16 additional positions, all of whom are subordinates (directly or indirectly) to the VP - Marketing. It does not include a Marketing Director position. The third chart is entitled "Table 1.2 – Financial Department." It consists of the VP – Finance and 14 additional positions, all of whom are subordinate, either directly or indirectly to the VP – Finance.

The documentation does not indicate whether the job titles refer to current positions or positions that the petitioner seeks to fill. However, the information contained in the organizational charts is inconsistent with the record of proceeding. For example, in the Form I-129, the petitioner stated that its operations consist of 22 employees, while the organizational charts depict a larger number of employees. Thus, the organizational charts do not credibly establish the petitioner's hierarchy and staffing levels. The petitioner failed to provide any further information regarding the organizational charts and the AAO will not attempt to decipher or "guess" the meaning of the charts.

Notably, the proffered position is not included in the organizational charts and the petitioner has failed to establish who will supervise the beneficiary and whether the beneficiary will have any

subordinate employees. The record of proceeding does not contain any evidence indicating who will direct the beneficiary's work and who will report to and be controlled by the beneficiary in the proffered position.

The petitioner claimed that the "organization's current general manager is the same officer who has been performing the function of Marketing Director." The organizational chart does not include a "GM" position and the petitioner did not submit any documentary evidence to support its assertion.²

Accordingly, the organization charts are not probative and will not be accorded any weight in this proceeding. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. *See* 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8), and (12). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director reviewed the response to the RFE and determined that the petitioner had not established eligibility for the benefit sought. The director denied the petition on January 12, 2010. The matter is now before the AAO on appeal.

The AAO will now address the director's primary basis for denial of the petition, namely, the determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

² Counsel stated that "the only employee who performed the duties of Marketing Director is the current President/GM of the petitioner who likewise has a bachelor's degree in Business Administration." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

- (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) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position;
or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R.

§ 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.³

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a marketing director position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

³ In the appeal, counsel states that because the petitioner submitted documentation evidencing the "attainment of a baccalaureate degree as the minimum education requirement for the proffered position of Marketing Director" the position qualifies as a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO is not persuaded by counsel's claim. As discussed above, 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). To interpret one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in the illogical and absurd result of particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory definition at Section 214(i)(1) of the Act or regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii). *See Defensor v. Meissner*, 201 F.3d 384.

The petitioner and counsel assert that the proffered position falls under the occupational category "Public Relations Specialist," and the Labor Condition Application (LCA) filed with the Form I-129 was certified for that occupational category.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ The AAO reviewed the chapter of the *Handbook* entitled "Public Relations Managers and Specialists," including the sections regarding the typical duties and requirements for this occupational category.⁵

The subchapter of the *Handbook* entitled "What Public Relations Managers and Specialists Do" states the following about this occupation:

Public relations managers and specialists create and maintain a favorable public image for their employer or client. They write material for media releases, plan and direct public relations programs, and raise funds for their organizations.

Duties

Public relations managers and specialists typically do the following:

- Write press releases and prepare information for the media
- Identify main client groups and audiences and determine the best way to reach them
- Respond to requests for information from the media or designate an appropriate spokesperson or information source
- Help clients communicate effectively with the public
- Develop and maintain their organization's corporate image and identity, using logos and signs
- Draft speeches and arrange interviews for an organization's top executives
- Evaluate advertising and promotion programs to determine whether they are compatible with their organization's public relations efforts
- Develop and carry out fundraising strategies for an organization by identifying and contacting potential donors and applying for grants

Public relations specialists, also called communications specialists and media specialists, handle an organization's communication with the public, including consumers, investors, reporters, and other media specialists. In government, public relations specialists may be called press secretaries. They keep the public informed about the activities of government officials and agencies.

⁴ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

⁵ U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Public Relations Managers and Specialists, on the Internet at <http://www.bls.gov/ooh/Management/Public-relations-managers-and-specialists.htm#tab-1> (last visited June 29, 2012).

Public relations specialists must understand the attitudes and concerns of the groups they interact with to maintain cooperative relationships with them.

Public relations specialists draft press releases and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists. For example, a press release might describe a public issue, such as health, energy, or the environment, and what an organization does to advance that issue. In addition to publication through traditional media outlets, releases are increasingly being sent through the Web and social media.

Public relations managers review and sometimes write press releases. They also sponsor corporate events to help maintain and improve the image and identity of their organization or client.

In addition, they help to clarify their organization's point of view to its main audience through media releases and interviews. Public relations managers observe social, economic, and political trends that might ultimately affect the organization, and they recommend ways to enhance the firm's image based on those trends. For example, in response to a growing concern about the environment, an oil company may create a public relations campaign to publicize its efforts to develop cleaner fuels.

In large organizations, public relations managers may supervise a staff of public relations specialists. They also work with advertising and marketing staffs to make sure that advertising campaigns are compatible with the image the company or client is trying to portray. For example, if the firm has decided to emphasize its appeal to a certain group, such as younger people, the public relations manager ensures that current advertisements will be well received by that group.

In addition, public relations managers may handle internal communications, such as company newsletters, and may help financial managers produce an organization's reports. They may help the organization's top executives by drafting speeches, arranging interviews, and maintaining other forms of public contact. Public relations managers must be able to work well with many types of specialists to accurately report the facts. In some cases, the information they write has legal consequences. They must work with the company's or client's lawyers to be sure that the information they release is both legally accurate and clear to the public.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Public Relations Managers and Specialists, on the Internet at <http://www.bls.gov/ooh/Management/Public-relations-managers-and-specialists.htm#tab-2> (last visited June 29, 2012).

As already noted, the petitioner asserts that the proffered position falls under the occupational category of Public Relations Specialists. Upon review of the record of proceeding and the chapter regarding "Public Relations Managers and Specialists" in the *Handbook*, the AAO finds that the petitioner has not provided sufficient evidence to demonstrate that its proffered position has the same or similar duties, tasks, knowledge, work activities, etc. that are generally associated with public relations specialists. The AAO finds that, when compared with the full spectrum of the duties that comprise the public relations specialist occupation as described in the *Handbook*, the duties of the proffered position, to the extent that they are depicted in the record of proceeding, indicate that the beneficiary may perform a few general tasks in common with this occupational group, but not that the beneficiary's duties would constitute a public relations specialist position, and not that they would require the range of specialized knowledge that characterizes public relations specialists. To the extent that they are described in this petition, the petitioner has failed to establish that the proposed duties that the beneficiary would perform are at the capacity and level of functions that the *Handbook* uses to generally characterize the occupational category of public relations specialists.

Moreover, although the petitioner asserts that the position falls under the occupational category of Public Relations Specialists, it must be noted that the petitioner failed to provide documentary evidence to substantiate its claim that the beneficiary will primarily, or substantially, perform the same or similar duties, tasks and/or work activities that characterize this occupational category. The totality of the evidence in this proceeding, including information and documentation regarding the proposed duties, the petitioner's business operations and organizational structure, does not establish that the duties and responsibilities of the proposed position are substantially comparable to those of public relations specialists as described in the *Handbook*.

It is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the instant case, the petitioner and counsel submitted additional evidence to establish that the petitioner's proffered position is a specialty occupation position. More specifically, the petitioner and counsel submitted the following documents: a printout from America's Career InfoNet Occupational Profile for "Public Relations Specialists: New Jersey"; an O*NET OnLine Summary Report for "Public Relations Specialists"; and a printout from the Foreign Labor Certification (FLC) Data Center Online Wage Library for the occupation "Public Relations Specialists." The printouts include descriptions of the occupation. Upon comparing the information in the aforesaid documents against the petitioner's descriptions of the proposed duties of the proffered position, the AAO finds that the petitioner has failed to establish that the

beneficiary will perform substantially the same or similar duties to those associated with the occupational category "Public Relations Specialists." Thus, the printouts are irrelevant to these proceedings, except as evidence that, despite the petitioner's assertions to the contrary, the proffered position is not that of a public relations specialist.

Moreover, even if the petitioner had demonstrated that the proffered position were a public relations specialist position (which it has not), the printouts are not persuasive in establishing the position as a specialty occupation. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, although the AAO reviewed the documents, the AAO finds that the submissions are not probative evidence of the occupational category being a specialty occupation. The documents do not establish that this occupation requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in the specific specialty, or its equivalent, as a minimum for entry into the occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). As discussed below, the evidence does not support the proposition that the proffered position is a specialty occupation.

- The printout from America's Career InfoNet Occupational Profile for "Public Relations Specialists: New Jersey" states that the most common educational/training level is a bachelor's degree for this occupation.⁶ The printout includes a chart of the "Distribution of Educational Attainment." The chart states that it represents the "[p]ercent of employees aged 25 to 44 in the occupation whose highest level of educational attainment" falls into one of various categories. The AAO reviewed the Occupational Profile, but does not find that it is persuasive in establishing that the position qualifies as a specialty occupation by normally requiring at least a bachelor's degree or its equivalent in a *specific specialty*. More specifically, the Occupational Profile does not state specific educational requirements for the occupation. Rather, it provides the educational level of employees between the ages of 25 to 44 in the occupation, who responded to the survey. It does not classify the respondents as possessing a degree in any particular discipline or specific specialty. That is, the document does not state whether any of the respondents possess at least

⁶ The first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of public relations specialists have a bachelor's degree, it could be said that "most" public relations specialists possess such a degree. It cannot be found, therefore, that a statement that the most common educational/training level is a bachelor's degree [with no specification as to the field of study] would equate to establishing that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum entry requirement for the occupation, much less for the particular position proffered by the petitioner. (The AAO notes that the proffered position has been designated by the petitioner in the LCA as a low, entry-level position relative to others within the occupation). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

a bachelor's degree *in a specific specialty* that is directly related to the occupation.

- The petitioner and counsel submitted an O*NET OnLine Summary Report for "Public Relations Specialists" and a printout from the FLC Data Center Online Wage Library for the occupation "Public Relations Specialists." The AAO reviewed the documents but notes that the printouts do not state specific educational requirements for the listed occupation. Rather, the occupation is classified according to a "Job Zone" rating system. The Job Zone classification provides users with a guide to the vocational preparation levels of occupations. However, there is no indication that at least a bachelor's degree in a *specific specialty*, which is closely related to the requirements of the occupation, is normally required for entry into this occupation.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a categorical requirement for at least a bachelor's degree in a specific specialty. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that position is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).⁷

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. The record of proceeding does not contain any evidence from the industry's professional association to indicate that a degree is a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or

⁷ The AAO acknowledges that in a letter dated December 3, 2009 and in the appeal, counsel stated that "the petitioner is not attempting to establish eligibility based on the second, third nor fourth criteria of 8 CFR 214.2(h)(4)(iii)(A)." Nevertheless, the AAO reviewed the record of proceeding and analyzed the evidence to determine the petitioner's eligibility under any of the additional, supplement requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

individuals in the industry. However, the record of proceeding does contains several job announcements.

The petitioner stated that it is an enterprise engaged in staffing and recruitment. The petitioner also stated that it has 22 employees and a gross annual income of approximately \$2.3 million. The petitioner failed to provide its net annual income. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 561310 – which is not a valid NAICS code.⁸ The AAO notes that NAICS code 56131 is designated for "Employment Placement Agencies and Executive Search Services."⁹ The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating that this industry "comprises establishments primarily engaged in one of the following: (1) listing employment vacancies and referring or placing applicants for employment; or (2) providing executive search, recruitment, and placement services." See U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 56131 - Employment Placement Agencies and Executive Search Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=56131&search=2007> (last viewed June 29, 2012).

For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

The petitioner and counsel did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Moreover, upon review of the documents, the AAO finds that they do not establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

The following job posting were provided:

- Advertisements from (1) the Architects Golf Club (sports and physical recreation industry); (2) First Atlantic (credit union in the banking/financial services industry); (3) CyberScientific (biotech company); (4) IPC (provider of financial trading communication solutions to large financial services firms and global enterprises, IPC has approximately 1,000 employees); (5) ESPN (radio station); (6) Sotheby International Realty (real estate brokerage

⁸ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity. Each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last viewed June 29, 2012).

⁹ See U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 56131 - Employment Placement Agencies and Executive Search Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=56131&search=2007> (last viewed June 29, 2012).

company, with approximately 2,000 sales associates); (7) TeleNav (location-based services, with services in 29 countries, and approximately 700 employees); and (8) Teva Pharmaceuticals (leading global generic pharmaceutical company employing 26,000 worldwide, largest manufacturer and distributor of pharmaceuticals in the world, globally operated in 19 countries). The advertisements are for dissimilar organizations from the petitioner. Therefore, they are outside the scope of consideration for this criterion, which encompasses only organizations similar to the petitioner. Thus, further review of the postings is not necessary.

- A job posting from Joule Staffing Services regarding a position with a large telecommunications company. Thus, the position is with an organization that is dissimilar from the petitioner and is outside the scope of consideration for this criterion. Accordingly, further review of the posting is not necessary.
- An advertisement from the Aljen Group for a Marketing Director. The advertisement states that candidates must possess marketing experience but the advertisement does not include any educational requirements. Thus, the advertisement does not indicate that at least a bachelor's degree, or the equivalent, in a specific specialty is required for the position.
- Advertisements from (1) [REDACTED] for an international consumer products company; (2) King Pharmaceuticals (a pharmaceutical products company); and (3) Reed Business Information. No further information regarding the employers is provided. Thus, the record is devoid of sufficient information regarding the advertising organizations to conduct a legitimate comparison of the business operations and the petitioner failed to establish that the employers are similar to it. Furthermore, contrary to the purpose for which the advertisements were submitted, the postings state that a bachelor's degree is required, but they do not specify that a bachelor's degree in a *specific specialty* is required.
- An advertisement by ConvaTec. The posting appears to be for a dissimilar organization and, the petitioner failed to establish that the advertising organization is similar to it. Therefore, the posting is outside the scope of consideration for this criterion, which encompasses only organizations similar to the petitioner. Furthermore, the advertisement does not include any educational requirements. Thus, the advertisement does not indicate a practice of employing only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.
- An advertisement from Outcast Media. No further information regarding the employer is provided. Thus, the record is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison of the business operations and the petitioner failed to establish that the employer

is similar to it. Furthermore, contrary to the purpose for which the advertisement was submitted, the posting states that its *preferred* requirements include a "BA/BS, MBA a plus." Thus, the advertisement is not indicative of this employer requiring a bachelor's degree in a specific specialty.

- Advertisements by (1) Professional Placement Associates, Inc. for a position with a large managed-care company; and (2) Nielson. The employers appear to be dissimilar from the petitioner, and the record is devoid of sufficient information regarding the employers to provide a legitimate comparison of its business operations with the petitioner's. Furthermore, contrary to the purpose for which the advertisements were submitted, the postings specify only a requirement for a bachelor's degree, rather than a bachelor's degree in a *specific specialty*.
- An advertisement from Auburn Regional Medical Center. No further information regarding the employer is provided. Thus, it appears that the advertising organization is dissimilar from the petitioner, and the record is devoid of sufficient information regarding the advertising organization to provide a legitimate comparison of its business operations with the petitioner's. The petitioner failed to establish that the advertising employer is similar to it.
- A job posting by Covance. There is insufficient information regarding the advertising organization to provide a legitimate comparison of its business operations with the petitioner's. Thus, the petitioner has not established that the advertising organization is similar to it. Moreover, the advertisement states that a bachelor's degree in marketing, communications, science, liberal arts or business is acceptable for the position. Thus, this employer has not stipulated a degree in a *specific specialty* as a hiring requirement. Rather, the employer will accept a general-purpose degree, including a degree in science, liberal arts or business.
- An advertisement for FMTS to work with Shareowner Services, which the advertisement claims is the largest provider of stock transfer services in the U.S. There is insufficient information regarding the advertising organization to conduct a legitimate comparison of the business operations to the petitioner.
- An advertisement from American Express. There is insufficient information regarding the advertising organization to conduct a legitimate comparison of the business operations to the petitioner. However, it appears that the advertising organization's size, scope of operations and number of employees far exceeds the petitioner's. The employer states that experience in interactive marketing and recruitment inside a large complex global organization of 10,000+ employees is preferred. Moreover, the requirements of the position include a college degree (BA or BS). Contrary to the purpose for which the

advertisement was submitted, the posting does not indicate that a bachelor's degree in a *specific specialty* is required.

- A job posting for Central Garden & Pet Company (marketer and producer of branded products for the pet, lawn and garden supplies) for a director of marketing for Breeder's Choice (a division of the company's manufacturing pet foods). The industry and nature of the employer's business operations are dissimilar from the petitioner. Furthermore, contrary to the purpose for which the advertisement was submitted, the posting states that a bachelor's degree is required but does not indicate that a bachelor's degree in a *specific specialty* is required.
- An advertisement from H. Hunter and Associates for a confidential employer. The employer is in the senior care/senior housing industry and has a position for a candidate to serve at a medium-sized certified skilled CCRC [Continuing Care Retirement Community] facility. There is insufficient information to conduct a legitimate comparison to the petitioner's business operations; however, the industry and nature of the employer's business appear to be dissimilar to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the employer is similar to it. Therefore, it is outside the scope of consideration for this criterion, which encompasses only organizations similar to the petitioner. Moreover, the advertisement states that the employer's requirements for the position are as follows: business communication education [no degree specified], management skills training and previous sales experience, and five years of senior care marketing experience helpful. Thus, the advertisement is not indicative of a firm's employing for its advertised position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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.

It must be noted that even if all of the job postings indicated that 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 fails to demonstrate what statistically valid inferences, if any, can be drawn from these 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").

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty or its equivalent for organizations that are similar to the petitioner, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO 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 the particular position proffered in this petition is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specialty occupation.

The petitioner does not assert or provide any documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level based upon the occupational classification "Public Relations Specialists" at a Level 1 (entry level) wage.

Wage levels should be determined only after selecting the most relevant *O*NET* occupational code classification. Then, a prevailing-wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.¹⁰ Prevailing wage determinations start with an entry level wage (i.e. Level 1) and progress to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.¹¹ DOL emphasizes that these guidelines

¹⁰ See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

¹¹ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more

should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.¹²

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.¹³ A Level 1 wage rate is described by DOL as follows:

Level 1 (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

The AAO observes that the wage-rate element of the LCA is indicative of a comparatively low, entry-level position relative to others within the occupation. Based upon the wage rate, the beneficiary is a beginning level employee who has only a basic understanding of the occupation. He will be expected to perform routine tasks that require limited, if any, exercise of judgment. The beneficiary will work under close supervision, and he will receive specific instructions on required tasks and expected results. His work will be closely monitored and reviewed for accuracy. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position. Furthermore, the petitioner has not established that 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 in a specific specialty.

It is further noted that although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, the petitioner failed to sufficiently demonstrate how

than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

¹² See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

¹³ *Id.*

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. That is, the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or the equivalent.

The petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform any of the position. While a few related courses may be beneficial in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The 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, or the equivalent, in a specific specialty for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate

or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d 384. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees in a specific specialty or its equivalent. *See id.* at 388.

As previously discussed, the petitioner claimed in its response to the RFE that the "organization's current general manager is the same officer who has been performing the function of Marketing Director." Additionally, counsel stated that "the only employee who performed the duties of Marketing Director is the current President/GM of the petitioner who likewise has a bachelor's degree in Business Administration." The petitioner did not submit any documentary evidence to support its assertion. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Moreover, the AAO notes that such an assertion, i.e., the duties of the marketing director position can be performed by a person with a bachelor's degree in business administration (without any further specification), is tantamount to an admission that the position is not, in fact, a specialty occupation. As mentioned earlier, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. *See* 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Additionally, information limited to one employee is not indicative of a sustained and significant history of an exclusive recruiting and hiring practice such as would be necessary to establish a normal employment practice by the petitioner.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Upon review of the record, the petitioner and counsel do not assert that the nature of the specific duties of the proffered position is specialized and complex. Furthermore, the petitioner did not submit any evidence to indicate 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.

Moreover, the AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position on the LCA as a low, entry-level position relative to others within the occupation. The petitioner designated the position as a Level 1 position (out of four possible wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation."¹⁴ Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and/or complex duties as such a position would likely be classified at a higher-level, requiring a significantly higher prevailing wage. The petitioner has not provided sufficient probative evidence 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.

Upon review of the record, the petitioner has not met its burden of proof to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the additional, supplement requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be

¹⁴ See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further except to note that the petitioner relies upon an academic evaluation of the beneficiary's educational credentials to establish that the beneficiary is qualified to serve in a specialty occupation position. (More specifically, counsel stated that "the petitioner, in qualifying the beneficiary, has solely relied on his educational attainment of having a bachelor's degree and not a combination of his education and work experience, and hence no additional evidence of his qualifying work experience is necessary for this purpose.") The evaluator determined that the beneficiary possesses a bachelor of business administration degree in accounting. The petitioner failed to demonstrate how the beneficiary, by virtue of holding the equivalent of a U.S. bachelor of business administration degree in *accounting*, would have attained at least that bachelor's degree level of a body of specialized knowledge that would have to be theoretically and practically applied if the proffered position were actually a specialty occupation (which, of course, it is not), so as to satisfy any beneficiary qualification criterion in the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). As such, the petition could not be approved even if the petitioner had established the proffered position as a specialty occupation.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal will be dismissed. The petition will be denied.