

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **AUG 02 2013**

OFFICE: CALIFORNIA SERVICE CENTER

IN RE:

Petitioner:

Beneficiary:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a stylized flourish at the end.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a "Hospitality Services and Publishing" firm with eight employees established in 2011. To employ the beneficiary in what it designates as an editor position, the petitioner endeavors to classify her 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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. *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"). 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. 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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an editor position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-3041, Editors from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree from the department of translation and interpretation studies at [REDACTED] in [REDACTED] the Republic of China, and a master's degree in journalism from [REDACTED]

Counsel also submitted a letter, dated March 24, 2012, from the petitioner's CEO, which stated the following about the duties of the proffered position:

The [proffered] position requires [the beneficiary] be responsible for the following primary tasks:

- (1) Content planning for [REDACTED], a Chinese language publication by [the petitioner] which seeks to promote Chinese tourism to [REDACTED] and enhance cultural relations between [REDACTED],
- (2) editorial work, including reviewing, rewriting, and editing articles submitted to [REDACTED] reviewing article ideas proposed by staff and freelance writers and deciding what material will appeal to [REDACTED] offering comments to improve articles, suggesting possible titles and designing layouts for both the paper and web versions of [REDACTED],
- (3) Journalism, including conducting investigative reporting, conducting interviews, contributing an editorial column, performing translations for publications, and
- (4) various business development tasks, including collaboration with strategic media partners of [REDACTED]

networking meetings, support event planning, support event execution, research, coordination, and representation of [the petitioner] in business situations such as conferences, meetings, etc.

As to the educational requirement of the proffered position, the petitioner's CEO stated: "In order to perform the duties as described above, the applicant must have at least a Bachelor's degree in Journalism or a related field."

On May 7, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted (1) three issues of the petitioner's [redacted] magazine; (2) a printout of a vacancy announcement the petitioner posted on its website; (3) evidence pertinent to [redacted] and (4) a letter, dated July 12, 2012, from the petitioner's CEO.

Articles in the issues of [redacted] magazine provided have been marked to indicate the beneficiary's contribution to them, such as "Edit," "Translate, Edit," "Interview, Translate, Edit."

The vacancy announcement provided is for an editor position and states, "Minimum degree requirement: Bachelor in Journalism or a related area."

The evidence pertinent to [redacted] shows that she received a master's degree in journalism from [redacted]. A document headed, "Payment History" indicates that she worked for the petitioner from August 2011 to May 2012, and that she was paid \$275 monthly, for a total of \$2,750.

The petitioner's CEO's July 12, 2012 letter states:

The petitioner currently employs one other individual in this position; we are enclosing a copy of [redacted] bachelor's degree to substantiate our requirement of a bachelor's degree for our employed Editors.

That letter also contains the following description of the duties of the proffered position:

- 1) Conduct in-person interviews (in English) with local government agencies, American businesses and corporations, academic organizations, public figures, local artists and high-profile individuals, to contribute stories for [redacted] in Mandarin. Using journalistic skills to receive and convey the information accurately and appealingly to our Chinese readers who are government delegates, business owners, tourists, and students visiting, studying and immigrating from China, as well as the [redacted] area. Write news releases for [redacted]. (35% of the time is used on this task)

- 2) Decide and pitch story ideas for American contributors based on the interests and the culture of our Chinese readers. The decisions are made according to massive volumes of research in both Chinese and American markets and media. Provide guidelines to contributors on the style, perspective, and tone of writing specifically required by each story. (20%)
- 3) Conduct translations on feature stories, and review translation on articles conducted by translators. Edit 50% of the stories in [REDACTED] (print). (25%)
- 4) Coordinate with photographers and layout designers to convey a visual presentation that meets quality standards while blending the spirit and message from the written content of stories in a way that is appealing and well-received by our readers. (5%)
- 5) Write and translate stories for [REDACTED] online, through interviews and research. Edit video projects using Final Cut Pro (professional video editing software) for [REDACTED] online, and also write scripts for bilingual voice dubbing. (10%)
- 6) Provide insights to American businesses and corporations who are focusing on attracting more Chinese investors, consumers and business partners in terms of proper communications approaches, through advertising in [REDACTED] (5%)

As to the educational requirement of the proffered position, the petitioner's CEO stated: "To competently and satisfactorily perform the duties described above, the prospective candidate must hold at least a bachelor's degree in journalism or other related field."

The director denied the petition on November 7, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted nine vacancy announcements placed by other companies. In his appeal brief, counsel cited those vacancy announcements, the description of the duties of the proffered position, the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter pertinent to editors, and the O*NET Internet site's inclusion of editor positions in Job Zone Four as support for the proposition that the proffered position qualifies as a specialty occupation position.

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it

can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 27-3041, Editors from O*NET. The *Handbook* describes the occupation of "Editors" as follows:

What Editors Do

Editors plan, review, and revise content for publication. An editor's responsibilities vary with the employer and the type and level of editorial position.

Duties

Editors typically do the following:

- Read content and correct for errors in spelling, punctuation, and grammar
- Rewrite copy to make it easier for people to understand
- Verify facts, using standard reference sources
- Evaluate submissions from writers to decide what to publish
- Work with writers to help their ideas and stories succeed
- Plan the content of publications according to the publication's style and editorial policy
- Develop story and content ideas while being mindful of the audience
- Allocate space for the text, photos, and illustrations that make up a story

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Approve final versions submitted by staff

Editors plan, coordinate, and revise material for publication in books, newspapers, magazines, or websites. Editors review story ideas and decide what material will appeal most to readers. They also review and edit drafts of books and articles, offer comments to improve the product, and suggest titles and headlines. In smaller organizations, a single editor may perform all of the editorial duties or share them with only a few other people.

The following are examples of types of editors:

Copy editors review copy for errors in grammar, punctuation, and spelling and check the copy for readability, style, and agreement with editorial policy. They suggest revisions, such as changing words and rearranging sentences and paragraphs to improve clarity or accuracy. They also may carry out research, confirm sources for writers, and verify facts, dates, and statistics. In addition, they may arrange page layouts of articles, photographs, and advertising.

Publication assistants who work for book-publishing houses may read and evaluate manuscripts submitted by freelance writers, proofread uncorrected proofs, and answer questions about published material. Assistants on small newspapers or in smaller media markets may compile articles available from wire services or the Internet, answer phones, and proofread articles.

Executive editors oversee assistant editors and generally have the final say about what stories are published and how they are covered. Executive editors typically hire writers, reporters, and other employees. They also plan budgets and negotiate contracts with freelance writers, sometimes called “stringers” in the news industry. Although many executive editors work for newspaper publishers, some work for television broadcasters, magazines, or advertising and public relations firms.

Assistant editors have responsibility for a particular subject, such as local news, international news, feature stories, or sports. Most assistant editors work for newspaper publishers, television broadcasters, magazines, book publishers, or advertising and public relations firms.

Managing editors typically work for magazines, newspaper publishers, and television broadcasters, and are responsible for the daily operation of a news department.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., “Editors,” <http://www.bls.gov/ooh/media-and-communication/editors.htm#tab-2> (last visited July 31, 2013).

Although the proffered position includes some duties more appropriate to reporter positions, most of the duties the petitioner's CEO attributed to the proffered position are consistent with the duties of editors as described in the *Handbook*. On the balance, the AAO finds that the proffered position is an editor position as described in the *Handbook*.

Counsel cited O*NET's inclusion of the proffered position in Job Zone Four as evidence that it requires a minimum of a bachelor's degree and qualifies as a specialty occupation position. On July 31, 2013, the AAO accessed the pertinent section of the O*NET Internet site, which addresses Editors under the Department of Labor's Standard Occupational Classification code of 27-3041. Contrary to counsel's assertion, O*NET does not state a requirement of a bachelor's degree. It assigns editors a Job Zone Four rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree."² Further, O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

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

How to Become an Editor

A college degree is typically required for someone to be an editor. Proficiency with computers and communications equipment also is necessary.

Education and Training

Employers generally prefer candidates with a bachelor's degree in communications, journalism, or English. Those with other backgrounds who can show strong writing skills also may find jobs as editors. Editors who deal with specific subject matter may need experience related to that field. Fashion editors, for example, may need expertise in fashion that they get through formal training or work experience.

The ability to use computers and communications equipment is necessary for editors to stay in touch with writers and other editors and to work on the increasingly important online side of a publication. Familiarity with electronic publishing, graphics, Web design, and multimedia production is important as well, because more and more material is being read online.

Work Experience

Editors can gain experience by working on their high school and college newspapers, or for magazines, radio and television stations, advertising and publishing companies,

² For an explanation of Job Zones, see <http://www.onetonline.org/help/online/zones>.

or not-for-profit organizations. Magazines and newspapers also have internships for students. Interns may write stories, conduct research and interviews, and gain general publishing experience.

Many editors start off as writers or reporters. For more information, see the profiles on writers and authors and reporters, correspondents, and broadcast news analysts. Those who are particularly skilled at identifying good stories, recognizing writing talent, and interacting with writers may be interested in editing jobs.

Advancement

Except for copy editors, most editors hold management positions and must make decisions related to running a business. For them, advancement generally means moving up the corporate ladder or to publications with larger circulation or greater prestige. Copy editors may move into original writing or substantive editing positions or become freelancers.

Important Qualities

Creativity. Editors must be creative, be curious, and have knowledge in a broad range of topics. Some editors must regularly come up with interesting story ideas and attention-grabbing headlines.

Decision-making skills. Editors must decide if certain stories are ethical or if there is enough evidence to report them.

Detail oriented. One of an editor's main tasks is to make sure that material is free of error and matches the style of a publication.

Interpersonal skills. In working with writers, editors must have tact and the ability to guide and encourage them in their work.

Language skills. Editors must ensure that all written content has correct grammar, punctuation, and syntax. As a result, strong language skills are essential for an editor.

Writing skills. Editors should enjoy writing and must be excellent writers overall. They must have good knowledge of grammar and punctuation rules and be able to express ideas clearly and logically.

Id. at <http://www.bls.gov/ooh/media-and-communication/editors.htm#tab-4> (last visited July 31, 2013).

The *Handbook* states that a college degree is "typically" required for an editor position. Even for those positions that require a degree, however, the *Handbook* does not indicate that the degree must be in any specific specialty. It states that "Employers generally prefer candidates with a bachelor's degree in communications, journalism, or English." Even if communications, journalism, and English were construed as delineating a specific specialty, however, a preference, even if it were universal, would not be a minimum requirement. The *Handbook* does not support the proposition

that editor positions qualify, as a category, as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some editor positions do not require such a degree.³

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of interviewing technique, editing, and translation, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

³ The AAO observes that, in the event that the petitioner mischaracterized the proffered position as a Level I, entry-level, position on the LCA, the visa petition would be deniable on other grounds.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did submit nine vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Magazine Special Sections Editor for the [REDACTED] magazine requiring a bachelor's degree and "two to three years related experience at a magazine or newspaper";
2. Special Sections Editor placed by a staffing company for an unidentified "top magazine company in the [REDACTED] area" requiring a bachelor's degree and "two to three years related experience at a magazine or newspaper";⁴
3. News Editor for [REDACTED] a large "media and entertainment" company, requiring an "undergraduate degree, preferably in journalism, political science, or English" and "at least three years experience as an editor, reporter or producer at a major news organization or blog that creates content under tight deadlines";
4. Copy Editor/Page Designer for [REDACTED] requiring a bachelor's degree and "2+ to 5 years" experience;
5. Copy Editor for [REDACTED] a "research and advisory firm focused solely on the information industry," requiring a minimum of a bachelor's degree and "5+ years of professional copyediting of quantitative and qualitative reports or journals";
6. Publications Editor for [REDACTED], a company that offers various types of training, requiring a bachelor's degree in journalism, English, humanities, social sciences, or related field and five years of experience editing technical material;
7. Editor for [REDACTED] which publishes the business-to-business biweekly Business Journal, requiring a bachelor's degree and "2-3 years editing/writing experience";
8. Editor for [REDACTED] which produces language-learning software, requiring a "Bachelor's degree in a language other than English, linguistics (theoretical, applied or computational) second language acquisition or other related fields of

⁴ Because the location and requirements of the positions in the first and second vacancy announcements are the same, and their job titles are very similar, the AAO suspects that the two announcements may be for the same position.

study" and "3-5 years experience using that degree in a professional career (teaching, translation, research)": and

9. Writer Editor for the [REDACTED] of the United States Department of Agriculture, requiring:

One year of specialized experience equivalent to at least the GS-7 grade level; or master's or equivalent graduate degree or 2 full years of progressively higher level graduate education leading to such a degree or LL.B. or J.D., if related; or an appropriate combination of specialized experience and education.

Some of the vacancy announcements provided were placed by companies in the periodical publishing industry, but most are not. The third, fifth, sixth, seventh, eighth, and ninth vacancy announcements were not placed by magazine publishers, and have no direct relevance to a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions with similar companies.

Although the first, second, and fourth vacancy announcements were placed by companies in the periodical publishing industry, the record contains no evidence that they are otherwise similar to the petitioner in, for instance, size and complexity. 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. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). As such, the first, second, and fourth vacancy announcements have not been shown to be relevant to whether a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions within similar companies.

Further, the first, second, fourth, fifth, and seventh vacancy announcements state a requirement of a bachelor's degree, but not a requirement of a bachelor's degree in any specific specialty. For this additional reason, they are not evidence that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions within similar companies.

Further still, the third vacancy announcement states a *preference* for a bachelor's degree in journalism, political science, or English. Even if journalism, political science, and English delineated a specific specialty, a *preference* for a degree in that wide array of subjects would not be a *requirement* of a minimum of a bachelor's degree in a specific specialty or its equivalent. For this additional reason, that vacancy announcement does not lend support to the proposition that a requirement of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions within similar companies.

Yet further, the sixth and eighth vacancy announcements each require a bachelor's degree from among an array of subjects. The sixth requires a bachelor's degree in journalism, English, humanities, social sciences, or related field. Journalism, English, all of the humanities, all of the social sciences, and any field that the hiring authority might construe as related to any of those subjects have not been shown to delineate a specific specialty. The eighth vacancy announcement requires a bachelor's degree in any branch of linguistics, second language acquisition, any language other than English, or any field the hiring authority might deem to be related to one of those subjects. That array of subjects has not been shown to constitute a specific specialty closely related to the position offered in that vacancy announcement. For this additional reason, those vacancy announcements have not been shown to be relevant to whether a requirement of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions within similar companies.

Even further, the ninth vacancy announcement states that a master's degree any subject would be a sufficient educational qualification for the proffered position. Even if that were a minimum requirement, it would not be a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. In addition, however, the ninth vacancy announcement states that one year of creditable experience at the GS-7 level would suffice as an alternative to the educational requirement, and the petitioner has not demonstrated that one year of experience at the GS-7 level is equivalent to a minimum of a bachelor's degree in a specific specialty or its equivalent. For both of those additional reasons, the ninth vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and is not directly relevant to whether a requirement of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions within similar companies.

Additionally, all of the advertised positions are for experienced candidates whereas the proffered position is an entry level position for an employee who has only basic understanding of the occupation, as indicated on the LCA where the petitioner designated the proffered position as a Level I position. The vacancy announcements provided do not appear, therefore, to be for positions parallel to the proffered position, and this is an additional reason that they are not directly relevant to whether a requirement of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions within similar companies.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from nine announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁵

⁵ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job 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

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described 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. For instance, 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 the duties of the proffered position. While a few related courses may be beneficial, or even required, 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 particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

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 of editor for firms similar to and in the periodical publishing industry required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Further still, as was observed above, the LCA submitted in support of the visa petition is approved for a Level I editor, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the occupation of editor. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some editor positions do not require such a degree.

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

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁶

Counsel submitted a print out of a vacancy announcement it posted on its website for an editor position. That vacancy announcement states: "Minimum degree requirement: Bachelor in Journalism or related area." Counsel also submitted evidence showing that [REDACTED] has a master's degree in journalism. A typed statement indicates that the petitioner hired her in August 2011. The petitioner's CEO stated that she works for the petitioner as its only current editor.

That the petitioner advertised, on one occasion, at an unknown time and for an unknown duration, for an editor with a minimum of a bachelor's degree in a specific specialty or its equivalent is insufficient to show that the petitioner normally requires such a degree for those positions.

The record contains no evidence to corroborate the assertion that [REDACTED] works for the petitioner as an editor, or that she is the petitioner's only editor. Further, the record contains no evidence, nor even an assertion, that the petitioner has never previously employed an editor.

⁶ 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 a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In any event, previously hiring only one employee with a master's degree in journalism does not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire, someone with at least a bachelor's degree in a specific specialty, or the equivalent, for the proffered position.

Because the evidence submitted is insufficient to demonstrate how many editors the petitioner has employed and what degrees they have had, it is insufficient to show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁷

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as planning content for the petitioner's magazine, conducting interviews, translating, writing, rewriting, and reviewing, contain no indication of duties with a nature so specialized and complex that they are usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of editor positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I editor position, a position for a beginning level employee with only a basic understanding of the duties of an editor. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to the proffered position, especially as the *Handbook* indicates that some editor positions require no such degree.

⁷ 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 a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria 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 AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.