(b)(6)

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

DATE: JAN 16 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

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:

SELF-REPRESENTED

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on November 17, 2011. The petitioner stated on the Form I-129 that it is a law firm established in 1978 with 17 employees and an undisclosed gross and net annual income. The petitioner seeks to employ the beneficiary as a legal assistant and 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 on February 24, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was 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; and (5) the Form I-290B, Notice of Appeal or Motion, with the petitioner's brief and previously submitted documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO concurs with the director's ultimate determination 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 remain denied.

As a preliminary matter, the AAO notes that even if the petitioner overcame the basis for the director's denial of the petition (which it has not), the petition must still be denied.[1] Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit a Labor Condition Application (LCA) that corresponds to the petition. For this additional reason, which is considered as an independent and alternative basis for the denial of the petition, the petition may not be approved.

In this matter, the petitioner stated that it seeks the beneficiary's services as a legal assistant. In the petitioner's November 11, 2011 letter in support of the petition, the petitioner stated generally that its legal assistant would support the work being performed by the attorneys in the firm and would primarily work with the attorney responsible within the international medical graduate group. The petitioner noted that its international medical graduate group focused heavily on immigration work for university and academic medical centers, clinics, medical

[1] The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). It was in this review that the AAO observed an additional ground for denial of the petition, which, although not noted by the director, nevertheless precludes approval of this petition.

centers, healthcare systems, and the healthcare sector in general. The petitioner indicated that the essential functions of the proffered position included:

- Management of Client Files – Perform case management of client files, including preparing and maintaining up-to-date, organized client files until closing of each case;
- Client Intake – Conduct thorough intake interviews with prospective clients to obtain information relative to their legal concerns and objectives;
- Client Communications – Maintain regular and appropriate contact with individuals and corporate clients, corporate human resource professionals, and representatives of appropriate government agencies;
- Legal Research – As requested, research both legal and non-legal aspects of a case as pertaining to the attainment of the client objectives;
- Legal Writing – Draft legal documents at the request and under the supervision of the Responsible Attorney, and appropriately customize government petitions and support letters;
- Case Preparation – Prepare petitions, applications, and other government forms, and prepare matters for filing to appropriate government agencies. Present all draft legal documents to Responsible Attorney for review and approval; and
- Client Filings – Under the supervision of Associate Attorneys, prepare and file thorough and accurate employment-related immigration documentation, including appeals, contracts, initial and amended immigration filings, government forms, and correspondence.

The petitioner noted that the position involved more than just completion of immigration forms; rather the individual in the position needed to interface directly with clients and elicit information from them on the nature, scope, and importance of their work, and correlate their work with matters of importance to U.S. national interests and objectives, and to clearly communicate the complex work of the physicians performing highly specialized clinical services, research, and/or teaching in medicine.

The petitioner stated that the minimum requirement for the position is a baccalaureate degree in English, literature, creative writing, communications, journalism, or a humanities background. The petitioner noted that it trained the legal assistants on the job usually hiring college graduates with no legal experience, although in some cases, the individuals possessed a certificate in paralegal studies. The petitioner also provided a Labor Condition Application, (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Paralegals and Legal Assistants" - SOC (ONET/OES Code) 23-2011, at a Level 1 (entry level) wage.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on February 10, 2012. With the RFE, the director notified the petitioner that additional documentation was required to establish that the present petition meets the criteria for H-1B classification. The AAO finds that, in the context of the record of proceeding as it existed at the time the RFE was issued, the request for additional evidence was appropriate under the above cited regulations, not only on the basis that the director was seeking required initial evidence, but also on the basis that the evidence requested

was material in that it addressed the petitioner's failure to submit documentary evidence substantiating the petitioner's claim that it had H-1B caliber work for the beneficiary for the entire period of employment requested in the petition.

In response, the petitioner stated: "the position involves substantial research and writing, and these core duties can only be performed in a satisfactory manner if a Legal Assistant within our firm possesses a theoretically-grounded understanding that can only be provided through a four year university course of study." The petitioner emphasized, among other things, that: "the principal duties of this position are to engage in research and writing activities so as to work cooperatively with the Attorney to develop high quality and effective, and usually writing-intensive and research intensive filings"; "[t]he research work being done deals in the cutting-edge research work being performed by our clients on various diseases in the United States and how their work advances the boundaries of biomedical research and provides key insights into the eradication and/or control of various diseases of national concern"; and "[g]iven the complex intricacies of this work, [the petitioner's] need [for] individuals who can engage in advanced research work and critical thinking, and then communicate clearly the merits and benefits of the work being done by [its] clients." The petitioner also noted: "[t]he Legal Assistant is required to draft correspondence and advocacy pieces intended to communicate mainly to USCIS [United States Citizenship and Immigration Services] the importance and benefits from their attainment of various immigration benefits by our clients." The petitioner added: "[w]ithout question, this is a complex and challenging task to merge biomedical research with immigration standards, and again, the proper and effective discharge of this assignment can only be done by a holder of a baccalaureate degree."

The petitioner also provided a position overview, stating:

> The Legal Assistant is a key member of [the petitioner's] legal team, and participates in all aspects of [the petitioner's] practice. He/she supports one or more attorneys in a wide-range of employment-based immigration cases, including employer-sponsored petitions and alien self-petitions. He/she provides professional services in a supportive role to the Responsible Attorney on assigned cases, aimed at the attainment of the immigration objectives of the firm's client(s). On assigned cases, the Legal Assistant is accountable to the Responsible Attorney for actions undertaken on behalf of the client(s). The Legal Assistant is expected to understand substantive, underlying fundamentals of cases assigned to him/her and to function in a proactive manner. He/she is expected to provide facilitative services on behalf of the client, including extensive client interaction, with the understanding that strategy and legal advice is beyond the scope of authorization and is properly and necessarily referred to the Responsible Attorney for resolution.

The petitioner noted that a bachelor's degree and an outstanding academic record is required.

On appeal, the petitioner emphasized its educational requirement for the proffered position is a baccalaureate degree in English, literature, creative writing, communications, journalism, or a humanities background as had been set out in the initial letter in support of the petition. The petitioner also declared that it had established that the duties performed by a legal assistant for its firm included specialized and complex duties usually associated with the attainment of a

bachelor's degree or higher and referenced its previous descriptions of the duties of the proffered position.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that the proffered position is a specialty occupation position. To make this determination, the AAO turns to the record of proceeding. To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. 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."

When determining eligibility for H-1B classification, it is incumbent upon the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The petitioner claims throughout the record that the proffered position involves a variety of specialized and complex duties and that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. However, the duties as described and the level of responsibility inherent within the description when set against the contrary level of responsibility conveyed by the wage level indicated on the LCA submitted in support of the petition undermines the petitioner's credibility with regard to the actual nature and requirements of the proffered position.

That is, the petitioner's assertions regarding the proffered position are questionable when reviewed in connection with the LCA submitted with the Form I-129 petition. As previously mentioned, the petitioner submitted an LCA in support of the instant petition that designated the proffered position under the occupational title of "Paralegals and Legal Assistants" - SOC (ONET/OES Code) 23-2011, at a Level 1 (entry level) wage.

We observe that 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.[2] Prevailing wage determinations start with an entry level wage 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

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[2] *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.[3] The U.S. Department of Labor (DOL) emphasizes that these guidelines 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.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.[4] 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.

The petitioner claims that the duties of the proffered position require the successful incumbent to exercise a high level of responsibility including research and writing and communication skills to facilitate services on behalf of the client, including extensive client interaction, with the understanding that strategy and legal advice are within the purview of the responsible attorney all in an effort to obtain immigration benefits for its clients; however, the AAO must question the level of complexity and independent judgment and understanding required for the position as the LCA is certified for a Level 1 entry-level position. The LCA's wage level indicates the position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

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[3] 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 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.

[4] *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands and high-level duties and responsibilities of the proffered position. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

> Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H–1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

> For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

[Italics added]. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties of the proffered position, that is, specifically, that corresponds to the level of work and responsibilities that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations. For this additional reason the petition may not be approved.

Moreover, as will be discussed further below, the AAO finds that, fully considered in the context of the entire record of proceedings, including the requisite LCA, the petitioner failed to provide a consistent characterization of the nature of the proffered position and in what capacity the petitioner actually intended to employ the beneficiary. The petitioner is obligated to clarify the

inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, *supra*.

It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into each basis discussed below for dismissing the appeal.

Next, the AAO will address the issue of whether the petitioner established that the proffered position is a specialty occupation. Based upon a complete review of the record of proceeding, the AAO concurs with the director's ultimate decision 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 one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which requires [1] 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 requires [2] 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, the 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;
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> *(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.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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.

In this matter, the petitioner identified the proffered position as a legal assistant. The petitioner claimed that a four-year bachelor's degree (or the equivalent thereof) in a variety of disciplines including, English, literature, creative writing, communications, journalism, or a degree with a broadly-based "humanities background" would be sufficient to perform the duties involved. Such an acknowledgment is tantamount to an admission that the proffered position is not a specialty occupation. To prove 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 discussed *supra*, 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 humanities 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, supra.* The AAO acknowledges that the petitioner also specified that a number of disparate degrees with only the general requirement of writing and communication skills would also be acceptable to perform the duties of the position. However, absent evidence of a precise course of study and a direct relationship between the resulting degrees and the duties and responsibilities of the position, it may only be concluded that the performance of the proffered position requires only a general bachelor's degree.

As the evidence of record fails to establish how the variety of degrees or a general degree in the humanities form either a body of highly specialized knowledge or a specific specialty or its equivalent, the director's decision must be affirmed and the petition denied on this basis alone. However, for thoroughness, the AAO will review each of criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) demonstrating that the petitioner has not established the proffered position is a specialty occupation.

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 AAO recognizes the U.S. Department of Labor's (DOL) *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[5]

The overarching reason for the AAO's dismissal of this appeal is that the proposed duties as described in the record do not establish that performance of the proffered position requires the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, as required by the H-1B specialty occupation provisions of the Act and their implementing regulations. The petitioner's descriptions of the proposed duties, although providing detail on the routine tasks that the beneficiary will perform, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically when read in the context of the evidence submitted in support of the petition.

The petitioner's description of duties corresponds most closely to that of a paralegal or legal assistant discussed in the *Handbook's* chapter on these occupations. It is noted that the *Handbook* does not report a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for either a paralegal or a legal assistant. *See* U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 Edition, "Paralegals and Legal Assistants," http://www.bls.gov/oco/ocos303.htm. The *Handbook* reports:

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[5] 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/.

Paralegals and legal assistants typically do the following:

- Investigate the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and present the information
- Keep information related to cases or transactions in computer databases
- Write reports to help lawyers prepare for trials
- Draft correspondence and other documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials

Regarding the educational requirements for a paralegal or a legal assistant, the *Handbook* lists a variety of paths that culminate in a position as a paralegal or a legal assistant. The *Handbook* indicates:

> Candidates for the position of a paralegal or a legal assistant can enroll in a community college paralegal program to earn an associate's degree. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Those who already have a bachelor's degree in another subject can earn a certificate in paralegal studies. Finally, some employers hire entry-level paralegals without any experience or education in paralegal studies and train them on the job, though these jobs typically require a bachelor's degree.

Accordingly, the *Handbook*, does not specify a precise and specific course of study relating directly and closely to the proffered position. That is, it is the number of disparate ways an individual can enter into the occupation of a paralegal or legal assistant that precludes the occupation from constituting a specialty occupation.

Contrary to the petitioner's claim on appeal, the *Handbook* does not support the proposition that the proffered position, as described in the record of proceeding, is one that meets the statutory and regulatory provisions of a specialty occupation. The *Handbook* does not support the proposition that the proffered position falls under an occupational category for which the *Handbook* requires a minimum of a bachelor's degree, or the equivalent, in a *specific specialty*. Accordingly, to satisfy this first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. This, the petitioner has failed to do. Further, as found above, the LCA submitted with the petition undermines the petitioner's claim that the position requires the performance of duties for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry. Thus, the petitioner has failed to satisfy the first criterion of 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 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.

Again, 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 at 1165 (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* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. We have reviewed the six letters written by individuals associated with other law firms and note that two of the letter-writers, confirm that a bachelor's degree in a general liberal arts discipline is sufficient to perform the duties of a legal assistant in an immigration law firm. As observed above, since there must be a close correlation between the required specialized studies and the position, the requirement of a general degree, 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). The four other letter-writers, all offer their opinion that the petitioner's proffered position of legal assistant, requires a bachelor's degree in English, journalism, communications, or a directly related liberal arts discipline or a social studies discipline. Again, however, other than the underlying skill of writing commensurate with the attainment of a general bachelor's degree, the letter-writers do not note that a precise course of study in a specific field is necessary to perform the duties of the proffered position. Rather, the letter-writers, like the petitioner, also accept that individuals with generalized degrees are able to perform the duties of a legal assistant.

Similarly, a review of the advertisements for legal assistants provided by the petitioner establishes at best that a bachelor's degree is generally required, but not at least a bachelor's degree in a *specific specialty* or its equivalent. We also observe that the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' 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. It must also 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 few 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 petitioner has also failed to satisfy 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." The evidence of record does not include sufficient consistent and probative evidence to distinguish the proffered position as unique from or more complex than a position that does not require a baccalaureate or higher degree in a specific discipline. The record does not include evidence establishing that the duties as described in this record of proceeding incorporate advanced knowledge in a particular field of study. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). We reiterate that the petitioner's acceptance of a four-year degree in a generalized field of study, such as the humanities, as well as its acknowledgement that the duties could be performed by an individual with a variety of degrees with only the commonality of writing and communication skills, confirms that the proffered position is not a specialty occupation. The AAO also hereby incorporates by reference and reiterates its earlier discussion that the LCA for the proffered position indicates that the position is a low-level, entry position relative to others within the occupation. Based upon the wage level, the beneficiary is only required to have a basic understanding of the occupation. Furthermore, based upon that LCA wage level, the beneficiary is expected to perform routine tasks that require limited, if any, exercise of independent judgment. Additionally, the certified LCA submitted with the petition indicates that the beneficiary's work will be closely supervised and monitored and she will receive specific instructions on required tasks and expected results.

The record does not sufficiently demonstrate how the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. 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 AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) -- the employer normally requires a degree or its equivalent 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 when considering this criterion.

In this matter, the petitioner provides a list of individuals previously or currently employed by its firm as a legal assistant. The petitioner states that each legal assistant had obtained a bachelor's degree and lists the legal assistants' fields of study as: English/psychology; political science/international relations; communications studies; Spanish/Italian; economics; sociology/anthropology; global studies; English; and history.[6] The petitioner has provided no information detailing how these disparate disciplines incorporate a precise and specific course of study leading to a degree in a specific specialty. On the contrary, the number of acceptable degrees for the proffered position demonstrates that the proffered position is not a specialty occupation as that term is defined in the statute and regulations.

We note further 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. 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").

We acknowledge the petitioner's reference to a previously approved Form I-129 petition on behalf of another beneficiary allegedly working as a legal assistant for the petitioner. In that regard, we observe that the director's decision does not indicate whether she reviewed the approval of the other nonimmigrant petition. If, however, the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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[6] The petitioner does not provide copies of diplomas, transcripts, paystubs, or other employment records in support of this claim. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

In this matter, the petitioner has not established 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).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. 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."[7] 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 in a specific discipline. Again, the petitioner's acceptance of a degree in a generalized field of study or a variety of degrees with no discernable comparable component coursework affirms that the proffered position is not a specialty occupation. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements 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. Thus, the appeal will be dismissed and the petition denied for this reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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[7] *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.