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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 07 2013 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

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:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

for 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 six-employee travel marketing and promotion company[1] established in 2000. In order to employ the beneficiary in what it designates as a contracts and accounts administrator position,[2] the petitioner seeks 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 the basis of his determination that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

In its March 27, 2012 letter of support, the petitioner claimed that the duties of the proffered position would include the following:

- Representing the petitioner in account negotiations with its clients;
- Preparing client invoices;
- Processing payments;
- Reconciling daily and monthly transactions;
- Maintaining bank account balances and statements;

---

[1] The petitioner provided a North American Industry Classification System (NAICS) Code of 5615, "Travel Arrangement and Reservation Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "5615 Travel Arrangement and Reservation Services," http://www.census.gov/cgi-bin/sssd/naics/naicsrch (accessed Apr. 2, 2013).

[2] The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 43-3021, the associated Occupational Classification of "Billing and Posting Clerks," and a Level I (entry-level) prevailing wage rate.

- Directing and coordinating all activities concerned with invoicing, payment, and the creation and redemption of gift certificates;

- Calling and corresponding with client companies or other interested parties in order to discuss, negotiate, and analyze services and account performance;

- Negotiating, administering, extending, terminating, and renegotiating client contacts; and

- Ensuring the petitioner's adherence to quality standards, deadlines, and proper procedures;

In his July 11, 2012 RFE, the director requested, *inter alia*, additional information and evidence to establish that the proffered position constitutes a specialty occupation. In response, counsel attempted to amend the nature of the position. As noted above, the LCA submitted in support of the petition was certified for the SOC (O*NET/OES) Code 43-3021, the associated Occupational Classification of "Billing and Posting Clerks," and a Level I (entry-level) prevailing wage rate. However, counsel claimed in his August 28, 2012 RFE response that the duties of the proffered position "have nothing in common with those of a 'Billing and Posting Clerk.'" Instead, he argued, its duties are similar to those of administrative services managers and contract specialists.

However, counsel's request to amend the petition in such a manner was improper and will not be honored. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(E) states, in pertinent part, the following:

> The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition . . . In the case of an H-1B petition, this requirement includes a new labor condition application.

See also Matter of Michelin Tire Corp., 17 I&N Dec. 248 (Reg. Comm'r 1978) (a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts). Counsel's request to reconsider the original petition as a petition for a different occupational classification is, therefore, rejected, and his arguments made in support of that request made below and on appeal will not be considered. If the petitioner wishes to have this petition adjudicated based upon an occupational classification that differs from the one specified in the LCA, it must file a new petition (with the required fees and a new LCA) pursuant to 8 C.F.R. § 214.2(h)(2)(i)(E) and *Matter of Michelin Tire Corp.*[3]

---

[3] It is important to note that, if USCIS were to honor counsel's attempt to amend the petition – i.e., by accepting his claim that the duties of the proffered position "have nothing in common with those of a 'Billing and Posting Clerk,'" the occupational classification under which the LCA was certified – the petition would be automatically denied over the petitioner's failure to submit an LCA which corresponds to the petition.

While the U.S. Department of Labor (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

Having made this initial procedural finding, the AAO will next address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

To meet its burden of proof in establishing the proffered position as a specialty occupation, 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 Immigration and Nationality Act (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.

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 (emphasis added):

> 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.

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. If the AAO accepted counsel's argument that the duties of the proffered position "have nothing in common with those of a 'Billing and Posting Clerk,'" then it would naturally follow that the petitioner had failed to submit an LCA that corresponds to the claimed duties of the proffered position, as the proposed duties as described in the record of proceeding would not comprise the type of position designated on the LCA – a billing and posting clerk. Such a failure of the petition and the LCA to correspond would itself preclude approval of this petition.

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;
>
> *(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), 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 rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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 duties proposed for the beneficiary were set forth earlier in this decision. At the outset of this discussion, the AAO finds that, even when read in the aggregate and as supplemented by the supporting documents submitted into this record of proceeding, the descriptions of the proposed duties and the position to which they are ascribed, do not establish the proposed duties, or the position that they comprise, as so complex, specialized, or unique as to require the practical and theoretical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as required to establish a specialty occupation in accordance with the definitions at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii). The extent to which those duties were described lacks substantive details of how those functions would be performed and also fails to show that performance of those functions would require the practical and theoretical application of any particular educational level of a body of knowledge in any specific specialty. Instead, the duty-descriptions provided by the petitioner when it filed this petition consisted entirely of vague generalities that provided little insight into what the beneficiary would actually be doing if the petition were approved. For example, although the petitioner claimed that beneficiary would "represent" the petitioner in "account negotiations," it did not explain the nature or scope of that representation. Nor did the petitioner describe the nature of such an "account negotiation." It is therefore unclear what the beneficiary would actually be doing while performing this particular task.

Nor did the petitioner explain the beneficiary's proposed duty of directing and coordinating all activities concerned with invoicing, payment, and the creation and redemption of gift certificates in any meaningful detail. Absent such explanation, it is not clear to the AAO what types of duties, and/or personnel, the beneficiary would direct and coordinate. The same shortcoming exists with regard to the beneficiary's proposed duty to ensure adherence to quality standards, deadlines, and proper procedures; again, without no description of such quality standards, deadlines, and proper procedures, the AAO is left with no basis upon which to ascertain what the beneficiary would actually be doing while performing this task.

In similar fashion, the petitioner also failed to clarify the beneficiary's proposed duty to negotiate, administer, extend, terminate, and renegotiate contracts with the petitioner's contracts. Simply stating, for example, that the beneficiary would negotiate contracts provides no basis, absent additional information, no basis for the AAO to ascertain what the beneficiary would actually be doing while

performing this task. Nor does not record contain any information regarding the types of contracts the beneficiary would negotiate or the types of settings in which she would negotiate such contracts.[4]

Having made this preliminary finding, the AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence contained in this record of proceeding.

As noted above, the AAO rejects counsel's attempt to amend this petition, pursuant to 8 C.F.R. § 214.2(h)(2)(i)(E) and *Matter of Michelin Tire Corp.* The petition will be adjudicated as originally filed.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.[5] As noted above, the LCA submitted by the petitioner in support of this petition was certified under the occupational category of "Billing and Posting Clerks," and the AAO agrees with the petitioner's assertion made on the LCA that the proposed duties generally align with those of billing and posting clerks.

The *Handbook's* discussion of the duties and educational requirements of billing clerks is located within its chapter entitled "Financial Clerks," which states, in pertinent part, the following:

> Financial clerks do administrative work for banking, insurance, and other companies. They keep records, help customers, and carry out financial transactions. . . .
>
> Financial clerks typically do the following:
>
> - Keep and update financial records
> - Compute bills and charges
> - Offer customer assistance
> - Carry out financial transactions
>
> Financial clerks give administrative and clerical support in financial settings. Their specific job duties vary by specialty and by setting.

---

[4] On appeal counsel attempts to draw a parallel between the contract negotiation duties proposed for the beneficiary and those often performed by lawyers. However, counsel's comparison fails. As the petitioner has failed to establish the nature and scope of the beneficiary's contract negotiation duties, it has certainly failed to establish that they are comparable to those of lawyers who engage in such activities.

[5] The *Handbook*, which is available in printed form, may also be accessed online at http://www.stats.bls.gov/oco/. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

> ***Billing and posting clerks*** calculate charges, develop bills, and prepare them to be mailed to customers. They review documents such as purchase orders, sales tickets, charge slips, and hospital records to compute fees or charges due. They also contact customers to get or give account information.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Financial Clerks," http://www.bls.gov/ooh/office-and-administrative-support/financial-clerks.htm#tab-4 (accessed Apr. 3, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

> A high school diploma is enough for most jobs as a financial clerk. These workers usually learn their duties through on-the-job training. . . .
>
> Financial clerks typically need a high school diploma to enter the occupation. Employers of brokerage clerks may prefer candidates with a 2- or 4-year college degree in business or economics. . . .
>
> Most financial clerks learn how to do their job duties through on-the-job training. The length of this training varies, but typically lasts less than 1 month. Under the guidance of a supervisor or another senior worker, new employees learn company procedures. . . .

Id. at http://www.bls.gov/ooh/office-and-administrative-support/financial-clerks.htm#tab-2.

These statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into this occupation.

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position qualifies as a specialty occupation under the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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 proposed position. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Nor is the AAO persuaded by counsel's citation to the DOL's *Dictionary of Occupational Titles* (the *DOT*) and his argument regarding the value of an SVP rating of 8. The *DOT* does not support the assertion that assignment of SVP ratings of 8 is indicative of a specialty occupation, which is obvious upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system,[6] and which states, in pertinent part, the following:

> **II. SPECIFIC VOCATIONAL PREPARATION (SVP)**
>
> Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.
>
> This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.
>
> Specific vocational training includes training given in any of the following circumstances:
>
> a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
>
> b. Apprenticeship training (for apprenticeable jobs only);
>
> c. In-plant training (organized classroom study provided by an employer);
>
> d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
>
> e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

---

[6] U.S. Dep't of Labor, Office of Administrative Law Judges, OALJ Law Library, *Dictionary of Occupational Titles*, http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM (accessed Apr. 3, 2013).

As noted at section A.1.1 in DOL's Employment and Training Administration's Clearance Package Supporting Statement to the Office of Management and Budget, which is accessible on the Internet at http://www.onetcenter.org/dl_files/omb2011/Supporting_StatementA.pdf, "The O*NET data supersede the U.S. Department of Labor's (DOL's) *Dictionary of Occupational Titles* (*DOT*)," and the *DOT* "is no longer updated or maintained by DOL." It should also be noted that the DOT was last updated more than 20 years ago, in 1991. *See* http://www.oalj.dol.gov/libdot.htm, the homepage of DOL's Office of Administrative Law Judges (OALJ), online edition of the *DOT's* Fourth Edition, Revised in 1991.

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: **The levels of this scale are mutually exclusive and do not overlap.**

(emphases in original.)

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required to perform the duties of the proffered position or, more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the information from the *DOT* is not probative of the proffered position as being a specialty occupation.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Finally, it is noted that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.[7]

---

[7] The *Prevailing Wage Determination Policy Guidance* ((available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed Apr. 3, 2013)) issued by DOL states the following with regard to Level I wage rates:

> **Level I** (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

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).[8]

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 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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and 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 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

---

> 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 [emphasis in original].

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered 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 possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring 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.

[8] Even if the proffered position were established as falling within the Administrative Services Manager occupational classification (and/or within the job duties provided by the *Handbook* as being normally performed by Contract Administrators, an occupational subcategory contained within the *Handbook's* discussion of Administrative Services Managers), as argued by counsel in his RFE response and on appeal, a review of the *Handbook's* information indicates that a position may be included within that occupational group without requiring at least a bachelor's degree, or the equivalent, in a specific specialty. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Administrative Services Managers," http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-2 (accessed Apr. 3, 2013).

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.

Nor do the five job-vacancy announcements contained in the record of proceeding satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, counsel has not submitted any evidence to demonstrate that these advertisements are from companies "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other fundamental dimensions.[9] Second, the petitioner has not established that these five positions are "parallel" to the proffered position.[10] Nor has the petitioner established that the job-vacancy announcements require a bachelor's degree, or the equivalent, in a specific specialty.[11] Nor does the petitioner submit any evidence regarding how representative these advertisements are of the industry's usual recruiting and hiring practices with regard to the positions advertised. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).[12]

---

[9] As noted above, the petitioner described itself on the Form I-129 as a six-employee travel marketing and promotion company, and provided a North American Industry Classification System (NAICS) Code of 5615, "Travel Arrangement and Reservation Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "5615 Travel Arrangement and Reservation Services," http://www.census.gov/cgi-bin/sssd/naics/naicsrch (accessed Apr. 2, 2013).

However, [redacted] describes itself as a healthcare services company; ICON describes itself as "a global provider of outsourced development services to the pharmaceutical, biotechnology, and medical device industries"; [redacted] states that it operates in the business/strategic management industry; Copart describes itself as an online automobile retailer; and the [redacted] describes itself as "a holding company focused on regulated an non-regulated energy delivery in the United States and Canada."

Counsel did not explain how the petitioner is similar to any of these companies. Again, simply 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. at 165.

[10] For example, it is noted that work experience is required for four of these five positions, and preferred for another. However, as noted above, the petitioner indicated by the wage-level in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. It is therefore difficult to envision how these attributes assigned to the proffered position by the petitioner by virtue of its wage-level designation on the LCA would be parallel to these positions described in these job vacancy announcements.

It is therefore not clear to the AAO how these positions are "parallel" to the proffered position.

[11] For example, [redacted] does not state that a bachelor's degree is necessary. It states only that such a degree is "preferred." While [redacted] require a bachelor's degree, they do not require that the degree be in a specific specialty.

[12] Furthermore, according to the *Handbook* there were approximately 504,800 persons employed as billing and posting clerks in 2010. *Handbook* at http://www.bls.gov/ooh/office-and-administrative-support/financial-

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not 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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, the AAO finds, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic billing-and-posting-clerk duties, which, the *Handbook* indicates, do not normally require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Additionally, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate

---

clerks.htm#tab-6 (last accessed Apr. 3, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the five submitted vacancy announcement 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 these 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 these five job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these five job-vacancy announcements which 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. 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 the performance requirements of the proffered position.[13] In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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").

---

[13] Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record contains no evidence regarding the petitioner's prior recruiting and hiring for this position. While a first-time hiring for a position is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited and hired for the position would not be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which requires the petitioner to establish that the nature of the proffered position's 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 the specialty.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

> **Level I** (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 [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

> **Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

> **Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.
>
> Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

> **Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification,

> and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*.

Nor do the unpublished AAO decisions cited by counsel establish the proposed position as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)*-*(4)*. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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

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