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

(b)(6)

DATE: OCT 0 8 2013 OFFICE: VERMONT 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:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner describes itself as a graphic design/branding company established in 2001.[1] The petitioner seeks to classify the beneficairy as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Thereafter, new counsel for the petitioner submitted a Notice of Appeal or Motion (Form I-290B). With the Form I-290B, counsel provided a brief. Accordingly, the record of proceeding is deemed complete as currently constituted.

In Part 3 of the Form I-290B, counsel states the following:

> The previously submitted filing and the response provided to USCIS [U.S. Citizenship and Immigration Services] request for additional evidence were improperly and insufficiently prepared by the previous counsel of the petitioner. Only minimal evidence was provided. We here submit additional evidence in support of the original petition and respectfully request the administrative grace to consider the totality of the evidence now in USCIS possession. The petition is approvable based on this additional explanatory evidence provided.
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> The petitioner relied directly on the legal advice provided by prior counsel. The deficient filing did not reflect the totality of the evidence available at the time of the filing, the deficiency of which was solely the responsibility of the attorney hired and paid to provide that evidence but who then failed to do so. The petitioner therefore seeks a renewed opportunity to fully present the case as to why the previously filed petition should be approved. To prove this case additional supporting evidence is provided. We seek relief under governing regulation by USCIS reviewing official of the denial prior to forwarding the appeal [to] the AAO for adjudication.

In the brief, counsel references "[n]ewly provided evidence in this appeal," which he claims is provided to show that the offered position qualifies as a specialty occupation and that the "petition is approvable based on this additional explanatory evidence."[2] Counsel further claims that "[t]he

[1] In the Form I-129 petition, the petitioner stated that it was established in 2001. The petitioner also reported that it has two employees and a gross annual income of $140,000. Although requested in the Form I-129, the petitioner did not provide its net annual income. Notably, in the business plan submitted with the petition, the petitioner reported that it was incorporated in 2004 and designated 2005 to 2006 as "Year 1: Start Up."

[2] With the appeal, counsel submitted copies of previously provided documents and new evidence. The AAO observes that much of the documentation submitted on appeal is dated after the H-1B petition was submitted. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R.

failure of the Petitioner's previous counsel to make any attempt to supply the Director with evidence that [positions] employed by similar organizations throughout the industry are required to have at least a bachelor's degree is baffling." In addition, counsel continues by stating that "no evidence was provided by prior counsel to support a favorable determination that the offered position does, in fact and as a standard, require candidates to have at [least a] four year design degree as a minimum." In addition, the petitioner submitted a letter dated July 9, 2012, stating that it hoped to rectify the defects in the past filing. Additionally, in a letter dated June 30, 2013, counsel referenced the "initial lack luster petition filing by the first attorney of record." Thus, the petitioner and counsel acknowledge that the record of proceeding before the director was insufficient to establish eligibility for H-1B classification.

The AAO fully and in-detail reviewed the submission, including the Form I-290B, counsel's brief and the petitioner's letter of support. However, the petitioner and counsel fail to identify any specific assignment of error. The petitioner and counsel acknowledge that the petitioner failed to establish eligibility for the benefit sought with its initial H-1B submission and with its response to the RFE. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." The petitioner and counsel have failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

In the instant case, new counsel claims that the initial filing and response to the RFE were "improperly and insufficiently prepared by the previous counsel of the petitioner. Only minimal evidence was provided." Although the petitioner and new counsel claim that the prior legal representative failed to submit evidence in this matter, the petitioner did not properly articulate a claim for ineffective assistance of counsel under *Matter of Lozada,*19 I&N Dec. 637 (BIA 1988), *affd*, 857 F.2d 10 (1st Cir. 1988). That is, the petitioner and its current counsel make an assertion regarding the petitioner's previous legal representative; however, the record is devoid of the required evidence to support a claim of ineffective assistance of counsel.

More specifically, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect

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§ 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Evidence that the petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of filing the petition.

whether a complaint has been filed with the appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. at 637. In this case, none of these items has been provided. Thus, the petitioner has not provided sufficient documentation to grant a request to provide discretionary relief on the basis of ineffective assistance of counsel.

Moreover, the AAO notes that the record of proceeding contains documentation from the petitioner. For instance, the petitioner signed the Form I-129 and Labor Condition Application.[3] In addition, with the initial petition, the petitioner provided a signed letter of support (which included the petitioner's description of the proffered position), client letters, a sublease agreement, a "future" organizational chart, documentation regarding the beneficiary's credentials, and a 2005 business plan.[4] In the RFE, the director notified the petitioner that additional information about the proposed employment was required. Notably, it appears that the response to the director's RFE included documentation from the petitioner (i.e., contracts, proposals, invoices). New counsel claims that the evidence submitted to USCIS was insufficient and that "the deficiency . . . was solely the responsibility of the attorney hired and paid to provide that evidence but who then failed to do so." However, the petitioner failed to submit an explanation describing the circumstances under which the previous legal representative failed to submit evidence. Upon review of the appeal, the petitioner did not establish a proper claim based upon ineffective assistance of counsel.

The petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). As previously noted, a petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. *Id.*

Here, even if the petitioner had identified specifically an erroneous conclusion of law or statement of fact for the appeal (which it has not), it could not be found eligible for the benefit sought. That is, upon review of the record, the AAO notes that the petitioner has failed to establish how the beneficiary's immediate duties 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.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

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[3] By signing the petition, a petitioner certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. 8 C.F.R. § 103.2(a)(2).

[4] The petitioner submitted a business plan dated May 24, 2005. The AAO observes that the business plan was created approximately seven years prior to the H-1B filing. Its submission suggests that the petitioner believed it was relevant to determining eligibility for the benefit sought.

The business plan provides a section regarding the petitioner's "personnel and staffing plan" but the proffered position is not included. In addition, the petitioner submitted job descriptions for its "future" employees. None of the positions require a baccalaureate (or higher degree) in a specific specialty, or its equivalent.

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

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

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

§ 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

In the instant case, the job description for the proffered position is generalized and generic, and the petitioner has failed to convey either the substantive nature of the work that the beneficiary would actually perform, or any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform the proffered position. Furthermore, the petitioner did not provide sufficient information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. The petitioner failed to specify which tasks are major functions of the proffered position and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). The petitioner did not establish the primary and essential functions of the proffered position.

In addition, the petitioner failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary

would perform.[5] On the Form I-129, the petitioner requested that the beneficiary be granted H-1B classification from October 1, 2012 to September 30, 2015. However, the petitioner failed to establish that had sufficient work for the beneficiary for the requested validity period.[6] Although

[5] The employment agreement between the petitioner and beneficiary is dated approximately two months after the submission of the Form I-129 petition.

[6] The record of proceeding does not establish that the petitioner has sufficient work for the beneficiary for the requested validity period. For example, in response to the director's RFE, the petitioner and/or prior counsel submitted a Statement of Work (SOW) between and the petitioner. The project title is The documentation was resubmitted with the appeal. The SOW lists the project manager as The AAO observes that the document states that "NO SERVICES MAY BE PERFORMED UNTIL AND CONTRACTOR SIGN THIS STATEMENT OF WORK AND ISSUES A VALID PURCHASE ORDER." Notably, the document is not signed by a representative. Further, the SOW indicates that it "will end on the completion of the Services by Contractor [the petitioner], which in no event shall be later than September 30, 2012." Thus, the project will end prior to the beneficiary's start date of October 1, 2012.

Furthermore, an email which has been pasted to the end of the SOW references an attachment (for the petitioner's signature), which was not provided. The email is dated May 23, 2012, thus *after* the H-1B petition was filed. Moreover, no information was provided regarding (the writer of the email), including the name of his employer, job title/role, etc. Thus, contrary to the petitioner's claim, the email does not establish that a contract with had been approved. Moreover, although the petitioner claimed that a final copy was pending from the legal department, the petitioner failed to provide such evidence to USCIS.

With the appeal, the petitioner provided a purchase order dated May 29, 2012. The description is " " The delivery date is June 1, 2012. There is no indication that the description relates to the above referenced SOW.

In addition, the petitioner submitted a proposal agreement between and the petitioner, dated May 16, 2012 (after the H-1B petition was filed). The AAO notes that the document indicates "Duration: approximately 3.5 months from the contract approval date." Under the section entitled "APPROVAL," signed the proposal on May 21, 2012 and (for the petitioner) signed the proposal on May 23, 2012. Thus, the project will end September 2012 (prior to the beneficiary's start date of October 1, 2012).

In response to the AAO's RFE, counsel for the petitioner submitted work proposals and contracts for (1) - dated March 6, 2013 (approximately 10 months after the H-1B submission) and (2) – dated June 12, 2013 (over a year after the H-1B was submitted). Notably, the contracts are not signed by the potential clients or by the petitioner. Thus, the documentation does not establish that the parties have entered into an agreement.

Further, the petitioner submitted several proposals. However, the record does not establish that contracts/agreements have been established from these proposals. Moreover, the proposals lack signatures of agreement by the parties. For instance the proposals for (dated May 25, 2012), (dated April 20, 2012), (dated April 9, 2012), and (dated March 6, 2012) have not been endorsed or signed by the petitioner and the potential clients.

the petitioner claims in the Form I-129 that it was established in 2001 (approximately eleven years prior to the H-1B submission), the AAO observes that the evidence does not establish that the petitioner has sufficient contracts/agreements or other evidence of projects that would entail H-1B caliber work for the beneficiary during the requested validity period. Moreover, the record lacks evidence sufficiently concrete and informative to demonstrate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a

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The petitioner provided copies of 2010 and 2011 individual income tax returns (Form 1040) for The tax returns indicate that Ms. is subject to the self-employment tax. Her adjusted gross income was $10,342 for 2010 and $25,730 for 2011. The total business income is listed as $11,129 for 2010 and $27,686 for 2011. The business address (on Schedule C) for the petitioner is identical to Ms. s home address as provided on the tax returns. Notably, the address listed on the tax returns shows a different suite number than the address provided on the Form I-129 petition and supporting documents, as well as the address listed on the sublease. No explanation was provided for the variance.

A bank account statement for the petitioner provides the following ending balances:

December 31, 2012	$4,750
January 31, 2013	$4,829
February 28, 2013	$6,058
March 29, 2013	$15,329
April 30, 2013	$26,525
May 31, 2013	$3,139

A savings account for the petitioner shows assets of approximately $50,000 to $120,000.

The petitioner provided a copy of a sublease agreement with the initial petition. Notably, the sublease indicates that its premises are located at and that the term of the agreement is from November 1, 2011 to October 31, 2012. The sublease further states that it "contains all of the conditions and terms made between the parties . . . and may not be modified orally or in any other manner than by agreement in writing signed by all parties to this Sublease or their respective successors in interest."

The AAO noted in its RFE (dated May 31, 2013) that there was insufficient evidence that the petitioner remained at the location. The petitioner was asked to provide documentation regarding the location of its business operations. The petitioner resubmitted the sublease agreement (which ended on October 31, 2012). No further explanation was provided by the petitioner. The petitioner did not provide any amendments or other documentation signed by the parties to the sublease. Thus, the sublease indicates that the term of the agreement has ended, and the petitioner has not established the current location (if any) of its business operations.

common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

Furthermore, the record of proceeding contains the text of several job vacancy advertisements. Although the appeal will be summarily dismissed for the reasons discussed, the AAO will briefly address the job postings. The AAO notes that the petitioner 's reliance upon the job vacancy advertisements is misplaced.[7]

Notably, the petitioner and counsel 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.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for establishing that at least a baccalaureate in a specific specialty, or its equivalent, is common to the industry in parallel positions among *similar organizations*. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In the Form I-129 and supporting documents, the petitioner stated that it is a company, established in 2001, involved graphic design/branding. The petitioner further stated that it has two employees. In addition, the petitioner stated that it has a gross annual income of $140,000 but failed to provide its net annual income. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541430.[8] The AAO notes that this NAICS code is

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[7] The petitioner provided the text of several job postings but did not provide copies of the actual postings. For each of the entries, the petitioner stated "Available Here" and provided a website address. No explanation was provided for failing to provide printouts of the actual postings. The director and the AAO are not required to attempt to locate the various job postings by searching the Internet for these links. Notably, the content of the links may have changed since the petitioner accessed the sites. Furthermore, the director and the AAO are not required to access unknown sites, which may inadvertently result in computer security risks or viruses.

[8] According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. *See*

designated for "Graphic Design Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

> This industry comprises establishments primarily engaged in planning, designing, and managing the production of visual communication in order to convey specific messages or concepts, clarify complex information, or project visual identities. These services can include the design of printed materials, packaging, advertising, signage systems, and corporate identification (logos). This industry also includes commercial artists engaged exclusively in generating drawings and illustrations requiring technical accuracy or interpretative skills.

U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 541430 – Graphic Design Services, on the Internet at http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last visited October 7, 2013).

Upon review of the documentation, the petitioner fails 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.

For instance, the advertisements include positions with [redacted] ("among the largest brand consultancies and has grown to include 36 offices in 25 countries" and "is widely respected for its annual study, The Best Global Brands"); [redacted] (chain of luxury department stores); [redacted] ("footwear related media"); [redacted] (which contains insufficient information regarding the employer); [redacted] ("leading global provider of consumer and retail market research information for a wide range of industries"); [redacted] (which contains insufficient information regarding the employer); [redacted] (the "practice is at the intersection of public experience and social change"); [redacted] (a luxury beauty company); [redacted] (a designer luxury womenswear collection); and [redacted]

Without further information, many of the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided information regarding which aspects or traits (if any) it shares with the advertising organizations. Additionally, for some of the job postings, the record is devoid of sufficient information regarding the advertising employers to conduct a legitimate comparison of the organizations to the petitioner.

Moreover, some of the advertisements do not appear to be for parallel positions. The petitioner submitted postings for jobs that appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

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http://www.census.gov/eos/www/naics/ (last visited October 7, 2013).

Additionally, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For instance, the postings for do not indicate that the positions require at least a bachelor's degree in a specific specialty, or its equivalent. Further, the posting for indicates that a "4-year degree" is necessary, but it does not provide any further specification. The postings for indicate that post-college experience is wanted by the employers but the advertisements do not provide any specifications as to the academic credentials for candidates. The advertisement for indicates that the employer seeks an individual with a degree or an "impressive professional portfolio." The posting does not indicate that such experience must be the equivalent to a bachelor's degree in a specific specialty. The advertisements do not indicate that a bachelor's degree in a *specific specialty*, or its equivalent, that is directly related to the duties of the position is required.

Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately 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"). Upon review, the documentation does not indicate that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry for parallel positions in organizations similar to the petitioner.[9]

As previously discussed, in the instant case, the petitioner and counsel have failed to identify an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.

[9] As the documentation does not establish that the proffered position qualifies as a specialty occupation, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.