

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: NOV 17 2014

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:
Beneficiary: [REDACTED]

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

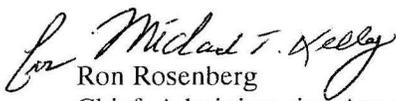
ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office 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 two-employee law office established in 2012. In order to employ the beneficiary in what it designates as a part-time paralegal position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding 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 petitioner's submissions on appeal which include the Form I-290B, a brief, and supporting documentation.¹

We find that, upon review of the entire record of proceeding, the evidence of record does not overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. THE PETITIONER AND THE PROFFERED POSITION

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a paralegal on a part-time basis. The LCA that the petitioner submitted in support of the petition was certified for use with a job prospect within the "Paralegals and Legal Assistants" occupational classification, SOC (O*NET/OES) Code 23-2011, and a Level I prevailing wage rate. The LCA also reflects that, as mentioned above, the petitioner assigned "Paralegal" as the position's job title.

The petitioner's January 28, 2013 letter of support, which was filed with the Form I-129, describes the petitioning company as a law firm based in Indiana, which "maintains a general practice handling matters involving criminal law, immigration law, bankruptcy, workers compensation personal injury claims and general litigation."

Regarding the proffered position, the petitioner claims to require the beneficiary's services as a law clerk/paralegal.² The petitioner described the position as follows:

¹ We note that a facsimile request for a properly executed Form G-28, Notice of Entry of Appearance of Attorney or Representative, was sent to the petitioner on May 20, 2014. Upon review, we note that the petitioner, a law firm, is acting as its own representative and, therefore, a Form G-28 is not required.

² We note that the petitioner interchangeably refers to the proffered position as both "law clerk" and "paralegal" in its letter of support.

In this capacity as paralegal, [the beneficiary] will be responsible for performing research and preparing legal documents for Petitioner's client base. Specifically, [the beneficiary] will research and prepare contracts, litigation documents, including discovery and trial documents preparation, assisting with the filing and preparation of immigration forms, assisting with translations and depositions, and attend hearings with lawyers as needed. [The beneficiary] will also research issues relating to the areas of law including criminal law, immigration law, contract disputes, and court pleadings.

The petitioner concluded by stating that the proffered position requires an individual with at least a bachelor's degree in law or a masters of law (L.L.M). The petitioner claimed that the beneficiary is qualified for the position by virtue of his foreign bachelor's degree in law, his L.L.M. degree issued by a United States university, and his four years of experience working as a law clerk/ paralegal. In support of this contention, the petitioner submitted copies of the beneficiary's academic credentials and an evaluation of his foreign bachelor's degree, equating that degree to a bachelor's degree in Mexican legal studies.

The director found the initial evidence insufficient to establish eligibility for the benefit sought and issued an RFE on April 1, 2013. The petitioner was asked to submit probative evidence to establish that the proffered position qualifies as a specialty occupation. The director outlined some of the types of specific evidence that could be submitted.

In response to the RFE, the petitioner refined the description of the position and its constituent duties into the following list:

During pre-litigation process:

- Review and analyze facts of the case and identify the legal issue(s) in criminal, immigration, personal injury and worker's compensation cases;
- Perform in-depth studies of legal issues, which involves law research and analysis using legal search engines, such as Lexis and Westlaw; in particular, researching cases that have precedent, federal and state statutes, legal periodicals, law reviews and other legal sources for an "authority" to resolve a legal problem; reviewing and condensing applicable cases and statutes;
- Compare case-laws to determine the most appropriate authority relevant to the particular legal issue;
- Monitor legislative and regulatory developments in the area of worker's compensation matters, including but not limited to the areas surrounding Total Temporary Disability disputes, retaliatory discharge of employment, and employee rights under the Indiana Workers Compensation Statute;

- During pre-litigation process, locate and interview witnesses, prepare witness affidavits to support the client's position, prepare mediation statements, draft demand letters to the insurance companies to expedite settlement process;
- During pre-litigation process in criminal cases, interview witnesses, assist in depositions, draft of motions and interrogatories, review and research case law related to the defense of criminal and immigration cases;
- Preparation of briefs in support to Immigration matters specially for Cancellation of Removal and Motions for bond redetermination for clients represented by our office before Immigration Judges.
- Review and verification of evidence with the elaboration of a detail report with an analysis of the evidence presented before the immigration court.
- Legal research for case law related to Immigration and Criminal law using traditional methods and automatic search engines. Preparation of briefs and reports with an exhaustive analysis of the cases and jurisprudence found during research.

During litigation process:

- Investigate facts underlying litigation or arbitration disputes;
- In disputes involving matters of civil law, investigate and analyze the non-compliance of the defendants, such as worker's compensation insurance carriers with the legislation in force; in the cases of violations, assist attorneys in filing bad-faith claims;
- Assist attorneys in litigation process by: researching and analyzing all cases, statutes and secondary materials cited by the parties and other relevant materials necessary to reach decisions pending in cases filed with the court;
- Based upon research findings, prepare comprehensive and concise written memoranda including any Indiana court holdings dictating prevailing pertinent to matters in dispute;
- Draft briefs, pleadings, and appeals specifically dealing with issues in litigation, including preparing drafts for complaints and suits, preparing parties' case management plan, preparing answers, affirmative defenses and potential counterclaims, preparing motions to dismiss pursuant to affirmative defenses, drafting and responding to interrogatory requests, requests for admissions, and preparing drafts of summary judgment briefs and other various motions.

- Assist attorneys in responding to judges' inquiries on procedural and substantive issues.
- Preparation of witnesses and elaboration of interrogatories and questionnaires to be presented at trial by the supervising attorney.

The petitioner also submitted the following documentation in support of eligibility: (1) copies of vacancy announcements for positions it deemed parallel to the proffered position with the petitioner's industry; (2) an excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* discussing the occupational category of Paralegals and Legal Assistants; (3) a copy of the O*NET OnLine's Summary Report for Paralegals and Legal Assistants; (4) a copy of the American Bar Association's (ABA's) Approved Paralegal Education Programs; and (5) a copy of the Paralegal Studies Course Requirements for [REDACTED].

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on November 26, 2013.

Based upon a complete review of the record of proceeding, we find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

II. LAW AND ANALYSIS

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B 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 Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

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

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

particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

At the outset, we note that the evidence of record appears to support the petitioner's characterization of the beneficiary as a well-qualified or "model" candidate to perform the duties of the proffered position, based upon the U.S. equivalency of his foreign undergraduate degree, his U.S. post-graduate degree, and "his work experience related to the legal field." However, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.³ The *Handbook's* discussion of the duties of the Paralegals and Legal Assistants occupational group states, in pertinent part, the following:

Paralegals and legal assistants do a variety of tasks to support lawyers, including maintaining and organizing files, conducting legal research, and

Paralegals and legal assistants typically do the following:

- Investigate the facts of a case

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. Although the petitioner submitted an excerpt from 2012-2013 edition of the *Handbook* in response to the RFE, our references to the *Handbook* are from the 2014-15 edition available online.

- Conduct research on relevant laws, regulations, and legal articles
- Organize and maintain documents in a paper or electronic filing systems
- Gather and arrange evidence and other legal documents for attorney review and case preparation
- Write reports to help lawyers prepare for trials
- Draft correspondence and legal documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials by handling exhibits, taking notes, or reviewing trial transcripts
- File exhibits, briefs, appeals and other legal documents with the court or opposing counsel
- Call clients, witnesses, lawyers, and outside vendors to schedule interviews, meetings, and depositions

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. However, their specific duties may vary depending on the size of the firm and the area of law in which the paralegal works.

In small firms, paralegals duties tend to vary more. In addition to reviewing and organizing documents, paralegals may prepare written reports that help lawyers determine how to handle their cases. If lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments and draft documents to be filed with the court.

In large organizations, paralegals may work on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal may only review legal material for internal use, maintain reference files, conduct research for lawyers, or collect and organize evidence for hearings.

Litigation paralegals may assist attorneys in preparing for trial by organizing document binders, creating exhibit lists, or drafting settlement agreements. Some litigation paralegals may also help coordinate the logistics of attending the trial,

including reserving office space, transporting exhibits and documents to the courtroom, and setting up computers and other equipment.

Paralegals use technology and computer software for managing and organizing the increasing amount of documents and data collected during a case. Many paralegals use computer software to catalog documents, and to review documents for specific keywords or subjects. Because of these responsibilities, paralegals must be familiar with electronic database management and be up to date on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites.

Paralegals may specialize in areas such as litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, bankruptcy, immigration, family law, and real estate. In addition, experienced paralegals may assume supervisory responsibilities, such as overseeing team projects or delegating work to other paralegals.

Paralegals and legal assistants often work in teams with attorneys, fellow paralegals, and other legal support staff. They may also have frequent interactions with clients and third-party vendors.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Paralegals and Legal Assistants," <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-2> (last visited Sept. 25, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into the Paralegals and Legal Assistants occupational group:

There are several paths to become a paralegal. Candidates 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.

Associate's and bachelor's degree programs in paralegal studies usually combine paralegal training, such as courses in legal research and the legal applications of computers, with other academic subjects. Most certificate programs provide intensive paralegal training for people who already hold college degrees. Some certificate programs only take a few months to complete.

Many paralegal training programs offer an internship, in which students gain practical experience by working for several months in a private law firm, the office of a public defender or attorney general, a corporate legal department, a legal aid organization, or

a government agency. Internship experience helps students improve their technical skills and can enhance their employment prospects.

Employers sometimes hire college graduates with no legal experience or education and train them on the job. In these cases, the new employee may have experience in a technical field that is useful to law firms, such tax preparation, nursing, or criminal justice.

Id. at <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-4> (last visited Sept. 25, 2014).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into the pertinent occupational group. Rather, the *Handbook* states that most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. The narrative of the *Handbook* indicates that there are several educational paths to become a paralegal, including obtaining an associate, baccalaureate or master's degree in paralegal studies, as well as earning a certificate in paralegal studies (for those who already have a bachelor's degree in another subject). For entry into the occupation, the *Handbook* indicates that some employers hire paralegals without any experience or education in paralegal studies and train them on the job. The *Handbook* states that these jobs typically require a bachelor's degree. The *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent.

Upon review of the record, the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 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 satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. 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."

In this case, the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is the minimum requirement for entry.

Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that this particular position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs at 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 for positions that are, at one and the same time, not only (1) within the petitioner's industry but also both (2) parallel to the proffered position and (2) within 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, the record contains no letters or affidavits from firms or persons in the industry attesting to such a requirement.

We note the petitioner submission of a document entitled "ABA Approved Paralegal Education Programs," which lists three educational institutions in Indiana that provide paralegal education programs approved by the ABA. This document, however, falls short of establishing that the ABA, a national professional association that supports the legal profession, has established that a degree in a specific specialty is a mandatory minimum entry requirement for the occupation of paralegal. Rather, this document lists three schools; namely, [REDACTED] and [REDACTED] that provide approved paralegal educational programs. This document does not establish that a bachelor's degree in a specific specialty is an industry requirement for entry into this occupation.

The petitioner supplemented this list with an excerpt from [REDACTED] paralegal studies course requirements, which indicates that the school offers a bachelor's degree program in paralegal studies that is approved by the ABA. While we acknowledge the existence of this program, we note that [REDACTED] also, according to this document, offers an associate's degree in paralegal studies. Since this document states that all of the paralegal education programs at [REDACTED] are approved by the American Bar Association, none of this documentation is probative evidence of a minimum entry requirement for a degree in a specific specialty.

Moreover, the five vacancy-announcements submitted in response to the RFE and on appeal by counsel do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). We will address the deficiencies in each announcement individually.

The first submission is for the position of "Bilingual Legal Assistant/Law Clerk/Paralegal Intern" with [REDACTED] a three-person law firm. Rather than stating a specific degree requirement, this posting states various "class levels" for law students that it finds desirable. The petitioner asserts in response to the RFE that, by virtue of the requirement that a candidate be enrolled in one of the various law school class levels, and since an individual must have a least a bachelor's degree to enter law school, the posting represents the requirement of at least a bachelor's degree.

While we follow the petitioner's reasoning, the fact remains that there is no evidence that the law firm posting this vacancy announcement required that the candidate for the position hold a bachelor's degree *in a specific specialty* for entry into the position. There is no evidence that entry into law school requires a degree in any particular field. Absent evidence that the hiring firm requires its candidate to hold a bachelor's degree in a specific specialty, this advertisement is not evidence of a requirement for a degree in a specific-specialty, even for the particular position advertised.

The next posting is for the position of Full-Time Paralegal with [REDACTED]. This posting is also not probative evidence for establishing a requirement for a degree in a specific specialty as a common industry requirement: the posting indicates that the employer would consider hiring both (1) persons with a bachelor's degree, without limitation as to the major or academic concentration in which the degree was awarded, and also (2) persons with an associate's degree and paralegal certification – which also falls short of a requirement for at least a bachelor's degree in a specific specialty.

The third posting is for the position of Complex Litigation Paralegal with a "busy litigation firm" posted by [REDACTED]. This posting also identifies as acceptable credentials either (1) a paralegal certificate or (2) a bachelor's degree, without conditions regarding the major or field of study for which the degree was awarded. So, for the same reasons previously stated above, this advertisement is also not probative evidence towards satisfying the criterion at hand. .

The fourth posting - for a Paralegal with a customer of [REDACTED] - requires a bachelor's degree in business administration or a related field. The AAO notes that, in the H-1B specialty-occupation context a requirement for a general degree in business administration, without further specification, is not considered a requirement for a degree in a specific specialty. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Finally, the petitioner submitted a posting for a "Sr. Paralegal/Legal Analyst - Contracts and Compliance Specialist" for [REDACTED] which describes itself on its website as "the preferred brand portfolio of women's apparel, shoes, lingerie, men's and home products dedicated to plus sizes."⁴ Preliminarily, this advertisement must be discounted because it does not represent an organization similar to the petitioner, which describes itself as a two-person law firm. For the petitioner to

⁴ See [http://www.\[REDACTED\]](http://www.[REDACTED]) (last accessed Sept. 25, 2014).

establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. It is clear that these two entities are dissimilar.

Regardless, this posting also lacks probative weight because it, too, does not state a requirement for a degree in a specific specialty. According to the vacancy announcement, [REDACTED] requires a candidate with a bachelor's degree from an accredited college or university. Again, as noted above, this advertisement is not probative as it does not state a requirement for a degree in a specific specialty.

The submitted vacancy announcements, for the reasons set forth above, are not probative evidence towards satisfying this criterion. Therefore, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

Next, we find that the evidence of record does 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."

The statements of the petitioner with regard to the claimed complex nature of the proffered position are acknowledged. However, the petitioner has not provided sufficient evidence to establish why it is more likely than not that the proffered position can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

We find that, while the record's duty and position descriptions and all of the documentary support submitted into the record clearly establish the proffered position as belonging to the Paralegals and Legal Assistants occupational group, they neither provide nor apply to the proffered position an objective standard, from any authoritative source, to show that the proffered position possesses such complexity and uniqueness that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner's assertions are further undermined by the fact that it submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. Based upon the wage rate selected by the petitioner, 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 requiring 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.

More specifically, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Paralegals and Legal Assistants" at a Level I (entry level) wage. Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) 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.⁵ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.⁶ 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 as indicated by the job description.

As the evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn 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 or higher degree in a specific specialty or its equivalent for the position.

Our 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. Additionally, the record must establish that the 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.

⁵ For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁶ 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.

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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The record before the director contained no evidence of past hiring practices, thus suggesting that the petitioner is hiring for this position for the first time. On appeal, however, the petitioner claims that "the two paralegals / legal assistants / law clerks currently working in our office hold a bachelor's degree and one of them is currently enrolled in the [REDACTED] Indiana."

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), requires a demonstration that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. Merely stating that one of its two current "paralegals/legal assistants/law clerks" has "a bachelor's degree" and that the other one is enrolled in [REDACTED] does not even facially comply with this criterion. The petitioner must show a history of exclusively recruiting and hiring persons specialty-degreed individuals for the proffered position. Also, no independent evidence supporting the claims has been provided. 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)).

Further, even if the record contained sufficient evidence to show the requisite history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty - which is not the case - we would still find that the petitioner failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), because the record does not, as indicated above, establish that the asserted degree-requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position, a determination which is strengthened by the petitioner's submission as the supporting LCA one that was certified for the lowest wage-level, which is appropriate for a comparatively low, entry-level position relative to others within its occupation.

Thus, we also find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy 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 specific specialty or its equivalent.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entry for positions falling within the "Paralegals and Legal Assistants" occupational category. Again, the *Handbook* does not indicate that a bachelor's or higher degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such position, or, for that matter, that the nature of the duties of Paralegal or Legal Assistant positions are 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 or its equivalent. This aspect of the pertinent occupational group certainly does not preclude the petitioner from submitting evidence sufficient to satisfy this criterion. However, we find that, as numerous and as distinctly described as the duties may be in this record, they do not establish their nature as more specialized and complex than the nature of the duties of positions within the pertinent occupational group whose performance does not require knowledge usually associated with attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

Additionally, we reiterate our findings that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a Level I wage, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

The *Prevailing Wage Determination Policy Guidance* 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 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].

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

The pertinent guidance from DOL, 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

It would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Id.

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 the Level II wage-rate itself is associated with performance of only "moderately complex tasks that require limited judgment," is indicative of the relatively low level of complexity imputed to the proffered position by virtue of the petitioner's Level I wage-rate designation. Further, we note 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. . . .

Id.

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.

Id.

Here, we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level, entry position relative to others within the same 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).

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

III. CONCLUSION AND ORDER

For the reasons discussed above, we cannot conclude that the evidence of record has satisfied at least one criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal will be dismissed, and the petition will be denied.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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