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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: AUG 05 2014

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as 21-employee medical office¹ established in 2007. In order to employ the beneficiary in what it designates as a full-time translator position at a salary of \$39,146 per year² 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, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before us 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, we find that the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

II. LAW

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

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 621111, "Offices of Physicians (except Mental Health Specialists)." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "621111 Offices of Physicians (except Mental Health Specialists)," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 16, 2014).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Interpreters and Translators" occupational classification, SOC (O*NET/OES) Code 27-3091, and a Level III prevailing wage rate.

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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

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

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

III. SPECIALTY OCCUPATION

We will now address the director's finding that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

In its March 21, 2013 H-1B support letter, the petitioner stated that the duties of the proffered position would include the following tasks:

- She will assist with existing Slavic speaking patients so that they are able to have a thorough understanding of all medical documentation, such as patient intake documentation, contracts, disclaimers, and waivers which must be signed prior to being able to receive medical treatment.
- [She] will translate all the foregoing required documentation for each medical file, into the relevant Slavic languages so that the Medical Clinic meets all requirements before providing medical services.
- [She] will ensure that all communications required for expansion in the Healthcare Tourism sector, will be translated in Slavic languages so as to attract medical tourists.

- [She] will be directly involved with the Petitioner's marketing campaign which will involve the local, national as well as international market.
- Traditional marketing material, such as brochures, advertisements and press releases, will also be translated into Slavic Languages. [She] will be directly involved in and is an essential part of the expansion of the medical practice.

In its June 22, 2013 response to the director's RFE, the petitioner stated that the duties of the proffered position would break down as follows:

- 70% of time providing direct translation for seven medical providers. The foregoing includes translating for the patient when in medical consultation with the physician and other medical personnel, so that the patient can fully understand the medical condition and situation. It also helps the medical provider to be able to understand the patient and the symptoms so an accurate diagnosis can be made.
- 20% of time translating for the clinic personnel who schedule appointments with patients as well as for the office coordinators who encounter Slavic-speaking patients on the telephone and in-person. A translator is needed to facilitate diagnostic and therapeutic modalities for Slavic-speaking patients. Furthermore, the beneficiary will translate the "how to use" directions, which is a clinic document as to how to maintain records for insurance companies and physicians.
- 8% of time providing translation during the performance of diagnostic tests and treatments. The foregoing includes explaining procedures and testing to the patient as well as obtaining informed consent.
- 2% of time translating the internal brochures and education materials for patients. The material to be translated includes medical brochures for distributions [sic] to patients as well as after-care documentation. In addition, the beneficiary will work on a website which was especially designed for Slavic-speaking patients.

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

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 U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of

occupations it addresses.³ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Interpreters and Translators" occupational category.

The *Handbook* states the following with regard to the duties of positions falling within the "Interpreters and Translators" occupational category:

Interpreters and translators convert information from one language into another language. Interpreters work in spoken or sign language; translators work in written language.

Duties

Interpreters and translators typically do the following:

- Convert concepts in the source language to equivalent concepts in the target language
- Compile information, such as technical terms used in legal settings, into glossaries and terminology databases to be used in translations
- Speak, read, and write fluently in at least two languages, including English and one or more others
- Relay the style and tone of the original language
- Manage work schedules to meet deadlines
- Render spoken messages accurately, quickly, and clearly

Interpreters and translators aid communication by converting message or text from one language into another language. Although some people do both, interpreting and translating are different professions: interpreters work with spoken communication, and translators work with written communication.

Interpreters convert information from one spoken language into another—or, in the case of sign language interpreters, between spoken language and sign language. The goal of an interpreter is to have people hear the interpretation as if it were the original. Interpreters must usually be fluent speakers or signers of both languages, because they communicate back and forth among the people who do not share a common language.

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our reference to the *Handbook* are from the 2014-15 edition available online.

There are three common modes of interpreting: simultaneous, consecutive, and whispered.

Simultaneous. Simultaneous interpreters cannot begin interpreting until the general meaning of the sentence is understood. Simultaneous interpreting requires interpreters to listen or watch and speak or sign at the same time someone is speaking or signing. It requires a high level of concentration. For that reason, simultaneous interpreters usually work in pairs, each interpreting for about 20 to 30 minutes and then resting while the other interprets. Simultaneous interpreters are often familiar with the subject matter, so they can anticipate the end of the speaker's sentences.

Consecutive. Consecutive interpreting begins only after the speaker has said or signed a group of words or sentences. Consecutive interpreters may take notes while listening to or watching the speakers before presenting their interpretation. Note taking is an essential part of consecutive interpreting.

Whispered. Interpreters in this mode sit very close to the listeners and provides a simultaneous interpretation in a quiet voice. At least two interpreters take turns.

Translators convert written materials from one language into another language. The goal of a translator is to have people read the translation as if it were the original. To do that, the translator must be able to write sentences that maintain or duplicate the structure and style of the original meaning while keeping the ideas and facts of the original meaning accurate. Translators must properly transmit any cultural references, including slang, and other expressions that do not translate literally.

Translators must read the original language fluently. They usually translate only into their native language.

Nearly all translation work is done on a computer, and translators receive and submit most assignments electronically. Translations often go through several revisions before becoming final.

Translation is usually done with computer-assisted translation (CAT) tools, in which a computer database of previously translated sentences or segments (Translation Memories) may be used to translate new text. CAT tools allow translators to work more efficiently and consistently.

Interpretation and translation services are needed in virtually all subject areas. Although some interpreters and translators do not specialize in any particular field or industry, many focus on one or several areas of expertise.

The following are examples of types of interpreters and translators:

Conference interpreters work at conferences that have non-English-speaking attendees. The work is often in the field of international business or diplomacy,

although conference interpreters can interpret for any organization that works with speakers of foreign languages. Employers generally prefer more experienced interpreters who have the ability to convert from at least two languages into one native language—for example, the ability to interpret from Spanish and French into English. For some positions, such as those with the United Nations, this qualification is required.

Conference interpreters often do simultaneous interpreting. Attendees at a conference who do not understand the language of the speaker wear earphones tuned to the interpreter who speaks the language they want to hear. The interpreter listens to a bit of the speaker's talk and then translates that bit. Simultaneous interpreters must be able to listen to the next bit the speaker is saying while converting the previous bit of what the speaker said.

Guide or escort interpreters accompany either U.S. visitors abroad or foreign visitors in the United States to ensure that they are able to communicate during their stay. These specialists interpret in both formal and informal settings. Frequent travel is common for these workers.

Health or medical interpreters and translators typically work in healthcare settings and help patients communicate with doctors, nurses, technicians, and other medical staff. Interpreters and translators must have knowledge of medical terminology and the common words for medical terms in both languages.

Health or medical interpreters must be sensitive to patients' personal circumstances, as well as maintain confidentiality and ethics.

Health or medical translators often do not have the same level of personal interaction with patients and providers that interpreters do. They primarily convert information brochures, materials that patients must read and sign, website information, and patient records from one language into another language. Interpretation may be provided remotely, by video relay, or over-the-phone.

Legal or judiciary interpreters and translators typically work in courts and other legal settings. At hearings, arraignments, depositions, and trials, they help people who have limited English proficiency. As a result, they must understand legal terminology. Many court interpreters must sometimes read documents aloud in a language other than that in which they were written, a task known as sight translation. Both interpreters and translators must have strong understanding of legal terminology in both languages.

Literary translators convert journal articles, books, poetry, and short stories from one language into another language. They work to keep the tone, style, and meaning of the author's work. Whenever possible, literary translators work closely with authors to capture the intended meaning as well as the literary and cultural characteristics of the original.

Localizers adapt text for a product or service from one language into another, a task known as localization. Localization specialists work to make it appear as though the product originated in the country where it will be sold. They must know not only both languages, but they must also understand the technical information they are working with and the culture of the people who will be using the product or service.

Localization may include adapting websites, software, marketing materials, user documentation, and various other publications. Usually, these adaptations are related to products and services in manufacturing and other business sectors.

Localization may be helped by computer-assisted translation, in which a computer program develops an early draft of a translation for the localization translator. Also, translators may use computers to compare previous translations with specific terminology.

Sign language interpreters facilitate communication between people who are deaf or hard of hearing and people who can hear. Sign language interpreters must be fluent in English and in American Sign Language (ASL), which combines signing, finger spelling, and specific body language. ASL is a separate language from English and has its own grammar.

Some interpreters specialize in other forms of interpreting for people who are deaf or hard of hearing.

Some people who are deaf or hard of hearing lip-read English instead of signing in ASL. Interpreters who work with these people do “oral interpretation”, mouthing speech silently and very carefully so that their lips can be read easily. They also may use facial expressions and gestures to help the lip-reader understand.

Other modes of interpreting include cued speech, which uses hand shapes placed near the mouth to give lip-readers more information; signing exact English; and tactile signing, which is interpreting for people who are blind as well as deaf by making hand signs into the deaf-blind person’s hand.

Trilingual interpreters facilitate communication among an English speaker, a speaker of another language, and an ASL user. They must have the versatility, adaptability, and cultural understanding necessary to interpret in all three languages without changing the fundamental meaning of the message.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Interpreters and Translators,” <http://www.bls.gov/ooh/media-and-communication/interpreters-and-translators.htm#tab-2> (last visited July 16, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into positions within this occupational category:

Although interpreters and translators typically need at least a bachelor's degree, the most important requirements are that they be fluent in two languages (English and at least one other language). Many complete job-specific training programs. It is not necessary for interpreters and translators to have been raised in two languages to succeed in these jobs, but many grew up communicating in the languages in which they work.

Education

The educational backgrounds of interpreters and translators vary widely, but it is essential that they be fluent in English and at least one other language.

High school students interested in becoming an interpreter or translator should take a broad range of courses that focus on English writing and comprehension, foreign languages, and computer proficiency. Other helpful pursuits for prospects include spending time in a foreign country, engaging in direct contact with foreign cultures, and reading extensively on a variety of subjects in English and at least one other language. Through community organizations, students interested in sign language interpreting may take introductory classes in American Sign Language (ASL) and seek out volunteer opportunities to work with people who are deaf or hard of hearing.

Beyond high school, people interested in becoming interpreters or translators have many educational options. Although many jobs require a bachelor's degree, majoring in a language is not always necessary. Rather, an educational background in a particular field of study can provide a natural area of subject-matter expertise.

Training

Interpreters and translators generally need specialized training on how to do their work. Formal programs in interpreting and translating are available at colleges and universities nationwide and through nonuniversity training programs, conferences, and courses.

Many people who work as interpreters or translators in more technical areas—such as software localization, engineering, or finance—have a master's degree. Those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

Licenses, Certifications, and Registrations

There is currently no universal certification required of interpreters and translators beyond passing the required court interpreting exams offered by most states. However, workers can take a variety of tests that show proficiency. For example, the American Translators Association provides certification in 26 language combinations involving English.

Federal courts provide judiciary certification for Spanish, Navajo, and Haitian Creole interpreters, and many states offer their own certification or licensing. The [REDACTED] also offers certification for court interpreting.

The [REDACTED] jointly offer certification for general sign language interpreters. In addition, the registry offers specialty tests in legal interpreting, speech reading, and deaf-to-deaf interpreting—which includes interpreting among deaf speakers with different native languages and from ASL to tactile signing.

The U.S. Department of State has a three-test series for prospective interpreters—one test in simple consecutive interpreting (for escort work), another in simultaneous interpreting (for court work), and a third in conference-level interpreting (for international conferences)—as well as a test for prospective translators. These tests are not considered a credential, but their completion indicates that a person has significant skill in the occupation.

The [REDACTED] offers information for conference interpreters.

The [REDACTED] offers two types of certifications for healthcare interpreters: one for Associate Healthcare Interpreter (for interpreters of languages other than Spanish, Arabic, and Mandarin), and the other for Certified Healthcare Interpreter (for interpreters of Spanish, Arabic, and Mandarin).

The [REDACTED] offers certification for medical interpreters of Spanish.

Work Experience in a Related Occupation

Work experience is essential. In fact, some companies hire only interpreters or translators who have related work experience.

A good way for translators to learn firsthand about the occupation is to start working in-house for a translation company. Doing informal or volunteer work is an excellent way for people seeking interpreter or translator jobs to gain experience.

Volunteer opportunities for interpreters are available through community organizations, hospitals, and sporting events, such as marathons, that involve international competitors.

Paid or unpaid internships are other ways that interpreters and translators can gain experience. Escort interpreting may offer an opportunity for inexperienced candidates to work alongside a more experienced interpreter. Interpreters may also find it easier

to begin working in industries with particularly high demand for language services, such as court or medical interpreting.

Whatever path of entry new interpreters and translators pursue, they should develop relationships with experienced workers in the field to build their skills, confidence, and network. Mentoring may be formal, such as that through a professional association, or informal, such as with a coworker or an acquaintance that has experience as an interpreter or translator. Both the [REDACTED] and the [REDACTED] offer formal mentoring programs.

Advancement

After interpreters and translators have enough experience, they can move up to more difficult assignments, seek certification, and obtain editorial responsibility. They can also manage or start their own business.

Many self-employed interpreters and translators start their own business by first establishing themselves in their field. They may submit resumes and samples to different translation and interpreting companies and work for companies that match their skills with a job. Many then get work based on their reputation or through referrals from existing clients.

Important Qualities

Business skills. Self-employed and freelance interpreters and translators need general business skills to manage their finances and careers successfully. They must set prices for their work, bill customers, keep records, and market their services to build their client base.

Concentration. Interpreters and translators must have the ability to concentrate while others are speaking or moving around them.

Cultural sensitivity. Interpreters and translators must be sensitive to cultural differences and expectations among the people whom they are helping to communicate. Successful interpreting and translating is not only a matter of knowing the words in different languages but also of understanding people's cultures.

Dexterity. Sign language interpreters must be able to make quick and coordinated hand, finger, and arm movements when interpreting.

Interpersonal skills. Interpreters and translators, particularly those who are self-employed, must be able to get along with those who hire or use their services in order to retain clients and attract new business.

Listening skills. Interpreters and translators must listen carefully when interpreting for audiences to ensure that they hear and interpret correctly.

Speaking skills. Interpreters and translators must speak clearly in the languages they are conveying.

Writing skills. Interpreters and translators must be able to write clearly and effectively in the languages they translate.

Id. at <http://www.bls.gov/ooh/media-and-communication/interpreters-and-translators.htm#tab-4> (last visited July 16, 2014).

Here, the *Handbook* states that "The educational backgrounds of interpreters and translators vary widely, but it is essential that they be fluent in English and at least one other language... Although many jobs require a bachelor's degree, majoring in a language is not always necessary. Rather, an educational background in a particular field of study can provide a natural area of subject-matter expertise."

Although the *Handbook* does state that a bachelor's degree is typically required, it does not indicate that those translator positions require that the degree be *in a specific specialty*. The *Handbook* states that possible qualifications for positions within the interpreters and translators occupational category include widely varying educational backgrounds, including majoring in a language or in a particular field of study. Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails to establish what the acceptable degrees are for this position, and that they are closely related fields. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.⁴

The petitioner claims that the *Dictionary of Occupational Titles* (hereinafter the *DOT*) lists translator as SVP 7 and includes the following:

TITLE(s): TRANSALATOR (profess. & kin.)

⁴ We acknowledge the *Handbook's* statement that "many" people who work "in more technical areas" of this occupational category possess a master's degree. However, that statement does not indicate that even a majority of such positions require such a credential, let alone that it is normally required. Moreover, it is not clear that the proffered position would even constitute one of those "more technical areas," given the *Handbook's* subsequent statement that medical interpreters or translators are more likely to have completed "job-specific training programs" rather than being subjected to a requirement of possessing, at minimum, a bachelor's degree, or the equivalent, in a specific specialty. The proffered position would appear more akin to a medical interpreter or translator than to a software localization, engineering, or finance interpreter or translator, which were provided by DOL as representative of the types of "technical areas" to which it was referring.

Translates documents and other material from one language to another: Reads material and rewrites material in specified language or languages, following established rules pertaining to factors, such as word meanings, sentence structure, grammar, punctuation, and mechanics. May specialize in particular type of material, such as news, legal documents, or scientific reports and be designated accordingly. May be identified according to language translated. May represent or spell characters of another alphabet and be designated Transliterator (profess. & kin.).

GOE: 11.08.04 STRENGTH: S GED: R6 M3 L6 SVP: 7 DLU: 77

We find that the *DOT* does not support the assertion that assignment of an SVP rating of 7 is indicative of a specialty occupation. This conclusion is apparent upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specific Vocational Preparation (SVP) rating system.⁵ The section reads:

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).

⁵ The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

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.

Thus, an SVP rating of 7 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the *DOT* information is not probative of the proffered position 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 within any of these occupational categories 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."

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

Next, we find that the evidence of record does not satisfy 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 (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.

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 the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner has submitted several advertisements. The first four are for translator positions with the [REDACTED]. The fifth is for a translator position with a clothing store. The sixth is for a translator/editor-in-house position with a language company. The seventh is for a translator position with a financial service company. The eighth is for a translator position with a staffing company. The ninth is for a translator position with a translation services company. The petitioner has not submitted any documentary evidence to establish that these employers are in the petitioner's industry or are otherwise "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or to any other relevant extent. 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)). Furthermore, most of the employers who placed these advertisements do not require a bachelor's degree in a specific specialty, or the equivalent. Again, the language of this prong limits the range of relevant evidence to the petition-pertinent industry's practices (stating "[t]he degree requirement" as one that would be "common to the industry" as well as "in parallel positions among similar organizations." 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.⁶

Therefore, the evidence of record does not satisfy the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as it does not establish a requirement for at least a bachelor's degree in a specific specialty or its equivalent that is common (1) to the petitioner's industry and (2) for positions in 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."

⁶ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

In this particular case, the evidence of record does not 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 in a specific specialty or its equivalent.

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 the duties of that position. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Interpreters and Translators" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

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.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent, the evidence of record does not satisfy the second alternative prong of 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 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 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.

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").

In the April 22, 2013 RFE, the director requested evidence showing that "In your company or industry, a baccalaureate degree in a specific field of study is a standard minimum requirement for the job offered. Attestations to industry standards must be for similar positions among similarly situated companies..."

Although the director provided the petitioner with the opportunity to establish a history of recruiting and hiring only individuals for this position with a bachelor's degree in a specific specialty, or the equivalent, the petitioner submitted no such evidence. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would 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 at least a bachelor's degree in a specific specialty or its equivalent for the position.

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 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 asserting that the position is so specialized and complex as to satisfy this criterion, counsel refers to an unpublished decision in which we determined that the position of translator proffered in that matter qualified as a specialty occupation. However, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Furthermore, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Interpreters and Translators" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions (to the contrary, it indicates precisely the opposite), and the record indicates no factors, such as supervisory responsibilities, that would elevate the duties proposed for the beneficiary above those discussed in the *Handbook*. With regard to the specific duties of the position proffered here, we find that the record of proceeding lacks sufficient, credible evidence establishing that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or the equivalent.

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).

As the evidence of record does not satisfy 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.

IV. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the director's decision will not be disturbed.

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.