



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 03 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

*for Michael T. Kelly*  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a law corporation established in 1993. In order to employ the beneficiary in what it designates as a part-time legal translator/interpreter position,<sup>1</sup> the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of her determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

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

Upon review of the entire record of proceeding, the AAO concludes that the petitioner has failed to overcome the director's ground for denying this petition. That is, the evidence of record, as supplemented by the submissions on appeal, does not establish that the proffered position as described constitutes a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director.

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

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

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<sup>1</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O\*NET/OES) Code 27-3091, the associated Occupational Classification of "Interpreters and Translators," and a Level III prevailing wage rate.

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 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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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.

Among the documents filed with the Form I-129 is a March 31, 2013 letter of support that was submitted by the attorney who is the president of the petitioner law-corporation. The letter identifies the State of Hawaii and the District of Columbia as the jurisdictions in which the president is licensed to practice law. The letter includes the following description of the petitioner’s legal practice:



[S]ince 1993 this office has provided legal services exclusively to Japanese-speaking individuals and businesses. Japan-U.S. border practice areas include, among others: (i) real estate, (ii) estate planning and probate, (iii) business entities and general business activities, (iv) civil litigation, (v) immigration law; and (vi) treaty matters. Including the undersigned [(that is, the petitioner's attorney/president)], this office currently has one legal secretary.

Consistent with the Form I-129, this letter of support also refers to the proffered position as that of a part-time legal interpreter/translator.

Among other statements, the letter of support also describes the beneficiary's academic credentials and accomplishments, as well as her job history. The letter also asserts that "the nature of [the beneficiary's specific duties and responsibilities are [so] specialized and complex that knowledge required to perform [them] requires at least a baccalaureate degree in law."

Exhibit A of the three-page "Terms and Conditions of Employment" document that the petitioner submitted into the record of proceeding presents the following list as the nine sets of "Core Duties and Responsibilities" of the proffered position, along with the expected percentage of work time required for each enumerated set.

1. Translate Japanese-and-English-language legal memoranda, documents including, without limitation, affidavits, briefs, correspondences, contracts, entity documents, financial statements, family registries. (15%)
2. Under direction of attorney, interpret from English to Japanese (and vice versa) the legal aspect and consequences of memoranda and documents pertaining to a particular case or matter on behalf of clients. (15%)
3. Determine the meaning and nuance of legal terminology between corresponding Japan and U.S. attorneys (within and without the firm). (15%)
4. Check, rewrite and format translated materials such [as] contracts, entities, real property, wills, trust, estate planning and post-mortem administration matters from whatever source in either the Japanese or English-language in an easy, understandable format for clients and laypeople. (15%)
5. Prepare Japanese or English-language outlines of recent U.S. and/or Japan legislation, court cases and similar publications pointing out to attorney matters of note or that necessitates action on behalf of clients. (10%)
6. Under attorney's direction, answer questions from Japanese-speaking clients regarding substantive and procedural matters affecting his, her or its matter including information derived from administrative agencies and other law-related venues in Japan, U.S. and Hawaii. (10%)

Page 6

7. Research, study, analyze, translate and interpret Japan-U.S. law, treaties, statutes, decisions, legal articles, and code vis-à-vis Hawaii state and federal codes, laws, ordinances, regulations applicable to a specific case or matter. (10%)
8. Update and inform attorney of changes in Japan and/or U.S. law based on new legal publications and other authoritative legal sources. (5%)
9. Direct, coordinate and facilitate matters and related offices activities with attorney and other bilingual staff. (5%)

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

As a preliminary matter, we will first address the evidentiary value of the proposed duties as presented in the list of duties quoted above from the record. The petitioner should note that we are making this assessment mindful of and with due consideration to the totality of the evidence bearing upon the proffered position and the constituent duties that the petitioner has ascribed to it.

As reflected in the list quoted above, the duties are sufficiently described to show that the proffered position and its duties generally comport with the petitioner's attestation that the beneficiary would serve as a translator/interpreter in a legal office where Japanese and English fluency would be critical requirements. However, the record's descriptions of the duties and responsibilities are limited to general statements of translating and interpreting functions as well as general statements of other duties such as, for instance, "research, study, analyze" and "interpret" Japan-U.S. "law, treaties, statutes, decisions, legal articles, and code vis-à-vis Hawaii state and federal codes, laws, ordinances, regulations laws," and "Direct, coordinate and facilitate matters and related offices activities." None of the duties are presented with sufficient detail to establish the substantive nature and educational level of any body of highly specialized knowledge in law or legal matters that the beneficiary would have to apply. Also, the evidence of record does not establish that the stated Japanese language fluency and Japanese cultural awareness requirements are such that their performance would require a related degree or degree-equivalency.

By the same token, the AAO finds that the evidence of record fails to substantiate the accuracy of counsel's claim that "the nature of [the beneficiary's] specific duties and responsibilities are [so] specialized and complex that knowledge required to perform [them] requires at least a baccalaureate degree in law." In this regard, we also find that while the record's descriptions of the proposed duties, and, by extension, the proffered position are indicative of a job that would require some familiarity with legal concepts, those descriptions lack substantive content sufficient to establish that the duties' performance would more likely than not require the practical and theoretical application of at least a bachelor's degree level a body of highly specialized knowledge in law, or, for that matter, any other specific specialty.

As we base our decision upon our review of the entire record of proceeding, we have taken into account the three-page "Declaration of [REDACTED] (Pursuant to 28 U.S.C. § 1746)" (the [REDACTED])



Declaration). For the reasons discussed below, the AAO finds that, contrary to the declarant's ultimate conclusion, this document is not probative evidence that the proffered position is one that requires at least a bachelor's degree or the equivalent in law.

The petitioner provided a statement from [REDACTED] which describes the requirements for certification in the court reporting career. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). We first note that the instant position does not require the prospective employee to be certified by any particular body. Additionally, according to [REDACTED] statement, the certifying body to which she belongs does not require a bachelor's degree for certification, much less a bachelor's degree in a specific area of study. Although [REDACTED] states it is important for translators in the legal field to understand key concepts of the legal system found in both the source and target languages, she concedes that there is no specific course of study which prepares applicants for the career field. While [REDACTED] states that an interpreter or translator with a legal education would "likely be more effective than an interpreter or translator" without such education, she again stops short of saying that such education is required for certification.

We also find that the samples of the translating work produced by persons in the proffered position do not indicate any particular level of complexity, uniqueness, and/or specialization that would support a reasonable finding of a need for a particular level of educational or education-equivalency attainment in law or any other specific specialty.

The petitioner should note that the AAO hereby incorporates the above comments and findings into this decision's analysis of each of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO 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.

The AAO recognizes 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.<sup>2</sup> The AAO agrees with counsel that the proposed duties align with those of the Interpreters and Translators occupational group as discussed in the *Handbook*'s chapter naturally entitled "Interpreters and Translators."

The *Handbook*'s section "What Interpreters and Translators Do" includes the following information:

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2014-2015 edition available online.

## **What Interpreters and Translators Do**

Interpreters and translators speak, read, and write in at least two languages fluently.

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.

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

\* \* \*

**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 to 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:

\* \* \*

***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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Interpreters and Translators," <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-2> (accessed January 30, 2014).

The section "How to Become an Interpreter or Translator" What Interpreters and Translators Do" includes the following information:

### **How to Become an Interpreter or Translator**

Some interpreters and translators obtain a degree in a specialty area, such as finance.

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.

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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-4> (accessed January 30, 2014).

As evident in the excerpts above, the information from the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into the pertinent occupational category. Accordingly, the proffered position's inclusion within the



Interpreters and Translators occupational group is not sufficient in 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.”

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

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Nor has the petitioner submitted any other types of evidence to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

Next, the AAO finds that the petitioner did not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree.”

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

The AAO incorporates into its analysis and findings with regard to this criterion our earlier comments and findings with regard to lack of probative value of (1) the record’s descriptions of the proposed duties, (2) the [REDACTED] and (3) the sample translations submitted into the record of proceeding. As reflected in those earlier comments and findings, the evidence of record does not establish relative complexity or uniqueness as aspects of the proffered position, let alone as so aspects so elevated as to materially distinguish the proffered position from other positions in the pertinent occupation whose performance does not require a bachelor’s degree in a specific specialty or the equivalent. Rather, the AAO finds, the evidence of record has not distinguished either the proposed duties, or the position that they comprise, from the various types of translator or interpreter work described in the *Handbook*, which that publication indicates does not necessarily require a person with at least a bachelor’s degree, or the equivalent, in a specific specialty.

Although the petitioner’s generalized description of the proposed job duties does appear to contain some tasks beyond those normally performed by interpreters and translators (including, for instance, the research, study, and analysis, of laws) the petitioner has failed to explain these duties with sufficient, probative, detail so as to persuasively convey that such duties would in fact require the services of a person with at least a bachelor’s degree, or the equivalent, in law, or, for that matter, any specific specialty.

Consequently, as the evidence in the in the record of proceeding does not show 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, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner’s imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated



by the performance requirements of the proffered position. In the instant case, while the record does not establish a prior history of recruiting and hiring for the proposed position of only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

It should be noted that while a petitioner may believe and assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

In this case, the petitioner has submitted the resumes and IRS Forms W-2 for eleven past interpreters/translators. Although the resumes were heavily redacted, we note that the past degreed employees had a baccalaureate or higher degree in psychology, communications, English literature, management and information, political science, contemporary Japanese art history, travel industry management, business, and a degree whose name has been redacted. We note that one past translator had no degree but studied at a community college for two years. Of the eleven past employees only two had prior legal experience: one in intellectual property filings and another as a legal assistant. Without more, this wide spectrum of acceptable academic majors and subject concentrations from such diverse and apparently unrelated fields is itself indicative of a position that does not require at least a bachelor's degree in a specific specialty or the equivalent. Further, this history is materially inconsistent with the petitioner's present claim that performance of the

proffered position requires "at least a baccalaureate degree in law." In this regard, the AAO specifically finds that the evidence of record does not establish that the proffered position as described in this record of proceeding has changed materially from its duties as performed in the past by persons without a degree in law. This fact impacts against the overall credibility of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We will here expand the discussion of why the wide spectrum of degree majors and concentrations that have been accepted by the petitioner for the proffered position is, without more, inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

It is not apparent that the hiring history represented by the petitioner's documentary submissions regarding the wide spectrum of educational credentials of its previous interpreters/translators reflects either the need for degrees in closely related fields of study or that the degrees accepted in the past were closely related to the position's duties and responsibilities.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a



finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

As the evidence of record fails to establish how all of the dissimilar fields of study accepted by the petitioner in the past form either a body of highly specialized knowledge or a specific specialty or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed only by an individual with a bachelor's degree in law, or in any other specific specialty, for that matter, is at the very least unpersuasive.

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

The evidence of record does not support a finding that the petitioner has required a bachelor's degree in a specific specialty in the past. Indeed, the record establishes that the petitioner has even as its interpreter/translator a person without a bachelor's degree. The common element found in all past employees was the ability to speak Japanese. This skill does not require a degree in a specific specialty. Further, the AAO finds that, as the evidence of record has not established any material difference between the work performed by petitioner's past interpreter/translators and the work to be required of the beneficiary if this petition were approved, the array of degrees in non-related academic majors that the petitioner has accepted in the past is affirmative evidence that the proffered position does not require at least a bachelor's degree, or the equivalent, in a specific specialty.

As the evidence of record does not demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, the petitioner has also not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty.

Here again the AAO incorporates into its analysis of the criterion this decision's earlier comments and findings with regard to the insufficiency of the record's descriptions of the proposed duties.

As indicated above, the duties of the position are similar to those outlined in the *Handbook* as normally performed by translators, and the petitioner's description of those duties simply does not

establish that they surpass or exceed the duties performed by typical interpreters and translators, including those employed in the legal field in terms of specialization and complexity. As discussed above, the *Handbook* indicates that interpreters and translators perform these duties routinely and, as discussed above, it does not indicate that interpreters and translators are normally required to possess a bachelor's degree, or the equivalent, in a specific specialty. The evidence of record has simply failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.<sup>3</sup>

Accordingly, 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).

In closing, we will discuss two particular aspects of the appeal regarding which we reached adverse determinations. The first aspect is counsel's reliance upon nonprecedent decisions issued by the AAO; and the second is the petitioner's invocation of *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000).

The AAO notes that the petitioner's brief on appeal provides its own synopses of a number of AAO decisions, which the brief recognizes as non-precedent decisions. When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; see also *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO was not required to obtain a copy of the unpublished decisions cited in the brief.

If a petitioner wishes to have unpublished decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i). In the instant case, the petitioner has not submitted copies of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decision, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. While 8 C.F.R. § 103.3(c)

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<sup>3</sup> The petitioner states that the director erred by failing to consider the definition of "professional" under INA § 101(a)(32). However, by operation of the statutory definitions regarding the H-1B specialty-occupation program, whether or not a position is "professional" is not a standard for determining whether that position qualifies as an H-1B specialty occupation.



provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Finally, the AAO notes that the brief on appeal cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000), and does so in a context within the brief that encompasses (1) the petitioner's submission of the aforementioned documentary record of its previous hires for the proffered position, (2) copies of Internet articles reflecting the relatively high difficulty of learning and correctly applying the Japanese language, (3) and what the AAO sees as arguments articulating that the petitioner law firm's focus on Japanese clients and associated Japanese legal and customary requirements and its hiring practices demonstrates that the Federal district court's approach in *Tapis Int'l v. INS* should be applied in this proceeding.

Specifically, the AAO notes that in *Tapis Int'l v. INS*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for "various combinations of academic and experience based training." *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that "[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience." *Id.* at 177.

The AAO agrees with the district court judge in *Tapis Int'l v. INS*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added).

Moreover, the AAO also agrees that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. The AAO does not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty as the minimum for entry into the occupation as required by the Act.

In addition, the district court judge does not state in *Tapis Int'l v. INS* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor's degree in that field. In other words, the AAO does not find that *Tapis Int'l v. INS* stands for either (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, 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].").

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis Int'l v. INS*. The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.



Page 19

For the reasons related in the preceding discussions, the evidence in the record of proceeding has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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

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