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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

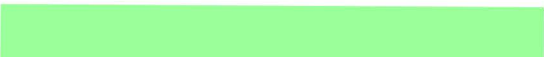



DATE: **FEB 05 2014**

OFFICE: CALIFORNIA 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 (hereinafter "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 an airport and cargo handling service company established in 2002. In order to employ the beneficiary in what it designates as a part-time public relations specialist position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position and failed to demonstrate that the Labor Condition Application (LCA) provided corresponds to the visa petition. On appeal, counsel asserted that the director's bases for denial were erroneous and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The AAO will first address the specialty occupation basis of denial. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

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

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

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

The LCA submitted to support the visa petition states that the proffered position is a public relations specialist position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-3031, Public Relations Specialists from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a [REDACTED] degree in marketing administration from the Center for Technical and Higher Education in Mexico. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in business administration with a concentration in marketing.

Counsel also provided a letter, dated April 1, 2013, from the petitioner's chief operating officer (COO); and counsel's own letter, also dated April 1, 2013.

In his April 1, 2013 letter, the petitioner's COO asserted that the proffered position qualifies as a specialty occupation position pursuant to 8 C.F.R. §214.2(h)(4)(iii)(A)(1) and (4) because a "Baccalaureate degree or higher degree or its equivalent is normally the minimum requirement for entry into [the] particular position," and "The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree." The petitioner's COO cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* in support of that proposition. The petitioner's COO also provided a table listing the following description of the duties of the proffered position and the number of hours and percentages of time to be spent on each duty:

No. of Hours/Week of Work	% of Time	Detailed Description of Duties and Responsibilities
4-5	20%	<p><u>Public Relations/Advertising/Marketing</u></p> <p>Carry on planning, managing, and implementing the development and communication of information designed to keep the business sector and aviation clients, informed of the [petitioner's] services and accomplishments. Coordinate press relations including new product/service releases and articles, make arrangements for representatives, and provide assistance to company personnel in writing and preparing letters and drafting articles made for the public. Coordinate production of advertising and marketing materials. Responsible for identifying cost-saving opportunities related to corporate communications, marketing, and advertising.</p> <ul style="list-style-type: none">• Level of Responsibility. High (Management of all PR relations required)

4-5	20%	<p><u>Collaboration</u></p> <p>Support overall function of corporate communications and be accountable for supporting daily activities within various sectors of department and in specific communicate with contract managers, human resources, corporate managers in maintaining communicable relations in receiving feedback of agency services and employee relations as well as overall organizational support function of [the petitioner's] business operation. Develop communication materials to support planned execution writing written materials, including fact sheets, press releases, media alerts, posts and e-mail communication to corporate clients of vital services and key information to grow business opportunities both in Spanish and English languages.</p> <ul style="list-style-type: none"> • Level of Responsibility: High (Direct release of public information impacts company brand image as well as pertinent resource information)
6-8	30%	<p><u>Management</u></p> <p>Manage and maintain corporate incentive programs including development of human resource criteria for crediting employee performance and awards as well as recognized achievements through program planning, award submissions, and developing relationship with key internal and external stakeholders.</p> <ul style="list-style-type: none"> • Level of Responsibility: Very High (Impacts organizational internal control mechanism)
4-5	20%	<p><u>Operational Guidance Development</u></p> <p>Support internal communications program by keeping operational analysts up to date on company's protocols and news and coordinate analysts' interview and events.</p> <ul style="list-style-type: none"> • Level of Responsibility: High (Impacts direct resource allocations to quantitatively and qualitative management in direct line of requirements based on

		inputs for business operations)
2-3	10%	<p><u>Project Management</u></p> <p>Gather, develop, coordinate, and maintain business requirements for various projects and/or systems from initial phase to final implementation, assuring requirements meet standards. Produce scheduled and ad hoc reports as necessary. Maintain comprehensive report of project status and tracking segmentation relating to passenger as well as staff organization. Coordinate the entire process and protocols as well as budgeting requirements for campaign public relations of new business launch units and provide detail information as well as specific calendar list of events coordinated through PR programs.</p> <ul style="list-style-type: none"> • Level of Responsibility: High (Specific project allocation will requires direct administration of resources for optimal guidance.)

In his April 1, 2013 letter, counsel also asserted that the proffered position qualifies as a specialty occupation position pursuant to 8 C.F.R. §214.2(h)(4)(iii)(A)(I) and (4) and cited the *Handbook* in support of that proposition.

On April 15, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted. It is noted that the director specifically requested:

[D]ocumentary examples of work product created or produced by the current "Public Relations Specialist" in the company, (i.e., copies of: reports, presentations, evaluations, recommendations, critical reviews, promotional materials, designs, blueprints, newspaper articles, web-site text, news copy, photographs of prototypes, etc.). Note: The materials must clearly substantiate the author and date created.

In response, counsel submitted (1) a form letter, headed May 3, 2012, and signed by [REDACTED] on May 7, 2013; (2) print-outs of web content pertinent to public relations specialist positions in general; (3) vacancy announcements previously placed by the

petitioner;¹ (4) print-outs of vacancy announcements placed by other companies; (5) evidence pertinent to an H-1B visa petition the petitioner filed that was approved for a different beneficiary; (6) evidence pertinent to the beneficiary of that previous H-1B visa petition; (7) a profile of the petitioner dated April 30, 2013, signed by the petitioner's COO; and (8) a letter, dated May 3, 2013, from the petitioner's COO. However, the petitioner and counsel did not submit any examples of work product created or produced by the petitioner's current public relations specialist, which work examples were specifically requested in the April 15, 2013 RFE. Further, they provided no explanation of that omission.

The May 3, 2012 form letter signed by [REDACTED] was apparently prepared by the petitioner's COO for Mr. [REDACTED] signature. The prepared form states:

I attest on 5/7/2013, that I have reviewed the Job Description Attached and confirm that following is minimum education requirement for entry into the position with our organization.²

Min Education: Bachelor's Degree Major: Marketing, Business, Econ, or Related

Mr. [REDACTED] signed that form on May 7, 2013. In a space marked, "Reason for Attestation," Mr. [REDACTED] purportedly wrote: "We are like size company and in same industry[.] We only hire Public Relations Specialist with minimum of Bachelor's Degree in Marketing or Related Degree[.]"

The print-outs of web content pertinent to public relations specialist positions in general include printouts from stateuniversity.com, about.com, USnews.com, personalitydesk.com, floridatechonline.com, Marketing-Schools.org, isseek.org, O*NET OnLine, and the Foreign Labor Certification Data Center Online Wage Library (OWL).

The evidence pertinent to the previous H-1B petition filed by the petitioner and the evidence pertinent to the beneficiary of that previous visa petition show that a visa petition the instant petitioner filed for [REDACTED] was approved for H-1B employment from December 15, 2011 to December 14, 2014 based on a description of duties provided by the petitioner's COO, many of which duties were substantially the same as the duties described by the petitioner's COO in

¹ The petitioner's own vacancy announcements are for positions entitled [REDACTED]

[REDACTED] and state the requirements of those positions. The relevance of the requirements of those positions to any material issue in this case, however, is unclear.

² Although Mr. [REDACTED] stated that his assertion pertinent to the educational requirement his company would place on the proffered position was based on an attached Job Description, a copy of that job description is not attached to the form that was submitted to USCIS. Whether the job description upon which he based his opinion was the description provided in the initial submissions with the visa petition, or the description provided in response to the RFE, or some other description is unknown to the AAO.

his April 1, 2013 letter, described above. Pay statements provided show that the petitioner employed Ms. [REDACTED] from December 6, 2011 to October 15, 2012. An evaluation in the record shows that Ms. [REDACTED]'s education was found to be equivalent to a U.S. bachelor's degree in communication.

The petitioner's COO's April 30, 2013 company profile contains the following version of the duties of the proffered position:

Public Relations Specialist Job Description

Public Relations/Advertising/Marketing (20%, 4-5 hours/week)***

- Carry on planning, managing, and implementing the development and communication of information designed to keep the business sector and aviation clients, informed of the [petitioner's] services and accomplishments.
 - Public Relations Specialist is required [sic] to keep abreast with major Aviation Clients utilizing security, baggage handling, and agencies operation offered by [the petitioner]. In maintaining management and planning, public relation specialist work in collaboration with top official and management of customer airline of required protocol, personnel requirement, training required for human resource as well as inform client companies with detail structure of offering by [the petitioner] and types of regulatory training, screening, attributes of staff pools to be disseminated to client company. The Public Relation[s] Specialist will utilize fundamentals in advanced communication, integrated marketing communication in collaborating with client's needs and provide a network of communicative channels with top management and business [sic] divisions of [the petitioner].
 - Public Relations Specialist reviews memorandums and communication between [the petitioner] and client companies in developing publicity campaigns geared towards the utility of client companies namely understanding consumer behavior associated with labor services provided to Airline to its Aviation customers in providing guidelines to standard of its dispatched employees for customer satisfaction as well as providing research and feedback analysis to management for operational guidance in training programs, types of personnel to be recruited, and the level of experience and education requirements.
- Coordinate press relations including new product/service releases and articles, make arrangements for representatives, and provide assistance to company personnel in writing and preparing letters and drafting articles made for the public.
 - Public Relations Specialist will confer with IT department in releasing job information release to the public as well as requirements for job positions and draft letters through various forums including utilizing business to business channels in constrictive service and memos to offer new services

provided by [the petitioner]. These specific information disseminated to customer aviation clients as well as recruitment efforts require clear communication in English and Human Resource control.

- Coordinate production of advertising and marketing materials. Responsible for identifying cost-saving opportunities related to corporate communications, marketing, and advertising.
 - Public Relations Specialist will work with media consultants to release and launch public information forums geared towards client companies including our new added service offering including prescreened personnel to provide contract labor relations including but not limited to airport operations personnel, clerks, mechanics, cargo warehousing agents and host of job categories Aviation sector requires. [The petitioner] utilizes its 600+ employees trained in each category for term contract period by year, month, weeks, and hours based on fluctuation of demands required of Airline Services and [the petitioner] is adding additional pooled candidates for specific requirements for intermittent, temporary as well as permanent labor requirements of client Airline companies, permanent staffing requirements provided by [the petitioner] include Security Personnel, Baggage Handling Agents, Wheel Chair Agents to name a few and Public Relations Specialist job function dictates communicating with vital human resource personnel in both [the petitioner] and client Aviation companies and [REDACTED] for projected services requiring Public Relations Specialist to have fundamental understanding of Human Resources and Cost Accounting Principle as well Economics to carry out the job functions.
- Our company relies on statistical market research to make fact-based business decisions.
 - The management is to receive statistical market information based on integrated marketing and research methodology produced by Public Relations Analyst to make critical decisions.
- The market information gathered with help identify new business opportunities
 - Public Relations Specialist is required to understand critical marketing concepts and marketing administration concepts to carry on the job functions as Public Relations Specialist job function directly relates to sale administration of [the petitioner] providing labor resource to client companies.
- Level of Responsibility: High (Management of all PR relations required)

Collaboration (20%, 4-5 hours/week)***

- Support overall function of corporate communications and be accountable for supporting daily activities within various sectors of department and in specific communicate with contract managers, human resources, corporate managers in maintaining communicable relations in receiving feedback of agency services and

employee relations as well as overall organizational support function of [the petitioner's] business operation.

- This requires Public Relations Specialist to undertake operation administration in collaborating with various business function components of [the petitioner] and related department and division of Client Aviation companies and to develop communication channels and marketing of services to broaden marketing of services offered by [the petitioner].
- Develop communication materials to support planned execution writing written materials, including fact sheets, press releases, media alerts, posts and e-mail communication to corporate clients of vital services and key information to grow business opportunities both in Spanish and English languages.
 - The Public Relations Specialist will work with our media department to develop client company geared offerings. We are currently in the midst of developing specific marketing and communication relationship with Hispanic origin Aviation companies and Public Relations Specialist newly inducted to our company will be responsible for developing communication materials.
 - Level of Responsibility: High (Direct release of public information impacts company brand image as well as pertinent resource information)

Management (30%, 6-8 hours per week)***

- Manage and maintain corporate incentive programs including development of human resource criteria for crediting employee performance and awards as well as recognized achievements through program planning, award submissions, and developing relationship with key internal and external stakeholders.
 - The Public Relations Specialist with [the petitioner] must concentrate on partaking with management programs of our company as our business is based on developing trained personnel to client companies and Public Relations Specialist will work with [the petitioner's] Management including promotion/development/training and achievement/reward programs and progressive track records program to distinguish tiers of employee pool demanded based on aviation budget and requirements. Fundamentals in Business Adminstrating, Critical Thinking, Market Strategies and Development of Product is required.
 - Level of Responsibility: Very High (Impacts organizational internal control mechanism)

Operational Guidance Development (20%, 4-5 hours per week)***

- Negotiate, renegotiate, and administer contracts with suppliers, vendors, other representatives, confer with staff, users, and vendors to discuss defective or unacceptable goods or services and determine corrective action
 - We provide warehousing agent services to client companies and Public Relations Specialist may act as chief negotiator for logistics services

provided by Airline companies for product goods as well as corrective actions in reimbursing client companies with damages or loss incurred by mishandling of goods by [the petitioner's] dispatched employees. The Public Relations Specialist is required to partake in this operational guidance development to enhance safety and reduce ineffective work flow as well as disseminate its 600+ staffs of various protocols outlining [the petitioner's] mode of operation.

- Level of Responsibility: High (Impacts direct resource allocations to quantitatively and qualitative management in direct line of requirements based on inputs for business operations)

Project Management

- Gather, develop, coordinate, and maintain business requirements for various projects and/or systems from initial phase to final implementation, assuring requirements meet standards. Produce scheduled and ad hoc reports as necessary.
 - Public Relations Specialist will make reports to management and integrate project outline, processes, result to top management and be involved in project management process in communicating with necessary business units within [the petitioner].
- Maintain comprehensive report of project status and tracking segmentation relating to passenger as well as staff organization.
 - Conduct market research of Aviation industry, labor industry as well as tracking passenger and cargo service offerings by [the petitioner] and generate comprehensive report of findings.
- Coordinate the entire process and protocols as well as budgeting requirements for campaign public relations of new business launch units and provide detail information as well as specific calendar list of events coordinated through PR programs.
 - PR Programs include budgeted promotional materials disseminated to client companies introducing the company services (such as brochure, website, and other host materials) to relay effective materials for review by client companies.
 - Level of Responsibility: High (Specific project allocation will requires direct administration of resources for optimal guidance.)

***The hours per week may fluctuate based on job functions/project assignment

The duties described in the Operational Guidance Development section of the description of duties have been entirely reformulated. As stated in the previous duty description submitted with the visa petition, the beneficiary's Operational Guidance Development duties consisted of "Support internal communications program by keeping operational analysts up to date on company's protocols and news and coordinate analysts' interview and events." As amended, they contain duties never previously contemplated, such as "Negotiate, renegotiate, and administer contracts with suppliers,

vendors, other representatives, confer with staff, users, and vendors to discuss defective or unacceptable goods or services and determine corrective action."

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition. Pursuant to *Matter of Michelin*, the revised duties shown in the Operational Guidance Development section of that duty description will not be considered.

In his May 3, 2013 letter the petitioner's COO stated that the proffered position requires a bachelor's degree in marketing, communication, economics, business, or a related major. The petitioner's COO also cited the submissions from O*NET OnLine and isseek.org as evidence that the proffered position requires a bachelor's degree.

The director denied the petition on May 29, 2013, finding, *inter alia*, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the evidence presented shows that the minimum requirement for entry into the proffered position is a bachelor's degree in "Communication, Marketing, Business, or a related field."

As was noted above, the April 15, 2013 RFE requested that the petitioner provide documentary examples of the work product of its current public relations specialist. Had that evidence been provided, it would have been highly pertinent to the type of work the petitioner requires of the proffered position and the level of specialization, complexity, and uniqueness of that work in the context of the petitioner's operations. However, as was also stated above, the petitioner failed, in response to that direct request, to provide any examples of the work product of its current public relations specialist.

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Without the requested evidence pertinent to the duties of the proffered position as it is performed in the context of the petitioner's operations, the AAO is unable to

determine what the substantive duties of the position are and, therefore, unable to determine: (1) that the proffered position is a specialty occupation, and (2) that the LCA provided, which is for a public relations specialist position, corresponds with the proffered position. Both bases for the director's decision of denial will therefore be upheld. The appeal will be dismissed and the visa petition will be denied on both of those bases.

Other reasons exist to find that the proffered position has not been shown to be a specialty occupation position. The petitioner's claim that a bachelor's degree in "business" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

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 139, 147 (1st Cir. 2007).³

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. This assertion is tantamount to an admission that the proffered position is not in fact a specialty

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

occupation. For this additional reason, the director's decision pertinent to the specialty occupation basis must therefore be affirmed and the visa petition denied.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has failed to provide the requested work product of its present public relations specialist and has failed, therefore, to establish the substantive nature of the work to be performed by the beneficiary. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook* on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In support of the proposition that the proffered position qualifies as a specialty occupation position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner and counsel cited O*NET OnLine, OWL, and the *Handbook*.

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 27-3031, Public Relations Specialists from O*NET. O*NET and OWL categorize public relations

specialists in Job Zone Four. The OWL statement is a condensed version of what the O*NET actually states about its Job Zone 4 designation. See the O*NET Help Center, at www.online.onetcenter.org/help/online/zones, for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations, even for those Job Zone 4 positions that may require a bachelor's degree. Therefore, the OWL information is not probative of the proffered position qualifying as a specialty occupation.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ The AAO reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Public Relations Specialists," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of public relations specialists:

What Public Relations Specialists Do

Public relations specialists create and maintain a favorable public image for the organization they represent. They design media releases to shape public perception of their organization and to increase awareness of its work and goals.

Duties

Public relations specialists typically do the following:

- Write press releases and prepare information for the media
- Respond to information requests from the media
- Help clients communicate effectively with the public
- Help maintain their organization's corporate image and identity
- Draft speeches and arrange interviews for an organization's top executives
- Evaluate advertising and promotion programs to determine whether they are compatible with their organization's public relations efforts

Public relations specialists, also called *communications specialists* and *media specialists*, handle an organization's communication with the public, including consumers, investors, reporters, and other media specialists. In government, public

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

relations specialists may be called *press secretaries*. In this setting, workers keep the public informed about the activities of government officials and agencies.

Public relations specialists draft press releases and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists. For example, a press release might describe a public issue, such as health, energy, or the environment, and what an organization does with regard to that issue.

In addition to publication through traditional media outlets, press releases are increasingly being sent through the Internet and social media.

Public relations specialists are different from advertisers in that they get their stories covered by media instead of purchasing ad space in publications and on television.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Public Relations Specialists," <http://www.bls.gov/ooh/media-and-communication/public-relations-specialists.htm#tab-2> (last visited Feb. 5, 2014).

Most of the duties the petitioner's COO attributed to the proffered position in his April 1, 2013 letter are consistent with the duties of public relations specialists as described in the *Handbook*. Further, the petitioner indicated on both the LCA and Form I-129 that the proffered position is a public relations specialist position. However, documentary work product of the petitioner's present public relations specialist was specifically requested and not provided. Without that evidence, the AAO cannot find that, if the visa petition were approved, the beneficiary would perform the duties described. As such, the AAO is unable to determine whether the proffered position is, in fact, a public relations specialist position as claimed. Therefore, even if entry into public relations specialist positions were shown to normally require a minimum of a bachelor's degree in a specific specialty or its equivalent, that would not support the proposition that the proffered position also requires such a specialized degree or equivalent.

Further, even if the proffered position were shown to be a public relations specialist position, it would still not have been shown to be a specialty occupation position. The subchapter of the *Handbook* entitled "How to Become a Public Relations Specialist" states the following about this occupational category:

How to Become a Public Relations Specialist

Public relations specialists typically need a bachelor's degree. Employers prefer candidates who have studied public relations, journalism, communications, English, or business.

Education

Public relations specialists typically need a bachelor's degree in public relations, journalism, communications, English, or business. Through such programs, students produce a portfolio of work that demonstrates their ability to prospective employers.

Training

Entry-level workers typically begin by maintaining files of material about an organization's activities, skimming and retaining relevant media articles, and assembling information for speeches and pamphlets. After gaining experience, public relations specialists begin to write news releases, speeches, articles for publication, or carry out public relations programs.

Other Experience

Internships at public relations firms or in the public relations departments of other businesses can be helpful in getting a job as a public relations specialist.

Some employers prefer candidates that have experience communicating with others through a school newspaper or a leadership position in school or in their community.

Important Qualities

Interpersonal skills. Public relations specialists deal with the public and the media regularly; therefore, they must be open and friendly to maintain a favorable image for their organization.

Organizational skills. Public relations specialists are often in charge of managing several events at the same time, requiring superior organizational skills.

Problem-solving skills. Public relations specialists sometimes must explain how a company or client is handling sensitive issues. They must use good judgment in what they report and how they report it.

Speaking skills. Public relations specialists regularly speak on behalf of their organization. When doing so, they must be able to clearly explain the organization's position.

Writing skills. Public relations specialists must be able to write well-organized and clear press releases and speeches. They must be able to grasp the key messages they want to get across and write them in a short, succinct way to get the attention of busy readers or listeners.

Id. at <http://www.bls.gov/ooh/media-and-communication/public-relations-specialists.htm#tab-4> (last visited Feb. 5, 2014).

The *Handbook* does not support the assertion that a baccalaureate or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupation. While the *Handbook* states that public relations specialists typically need a bachelor's degree, the *Handbook* does not indicate that such a degree must be in a specific specialty directly related to the duties and responsibilities of the position. The *Handbook* continues by indicating that employers prefer candidates who have studied public relations, journalism, communications, English, or business.⁵ Thus, clearly there is a wide-range of disparate fields that employers find to be acceptable. Moreover, the *Handbook* indicates that these employers "prefer" individuals with such backgrounds, accordingly, it appears that employers do not *require* a degree in these disciplines. Obviously, a preference is not an indication of a requirement by employers.

The *Handbook* does not conclude that normally the minimum requirement for entry into public relations specialist positions is at least a bachelor's degree *in a specific specialty*, or its equivalent. The *Handbook* indicates that employers accept candidates with backgrounds in a wide-range of disciplines. Thus, even if the proffered position had been shown to be a public relations specialist position, the *Handbook* would not support the assertion that the proffered position falls under an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The AAO will now address the printouts counsel provided of data from various websites.

The stateuniversity.com printout states, *inter alia*, "Most public relations workers have a college degree in journalism, communications, or public relations." [Emphasis supplied.] That *most* public relations workers have such a degree suggests that *some* public relations workers *do not* have such a degree.

As to the education/experience requirements of public relations specialist positions, the printout from about.com states, *inter alia*, "A Bachelor's degree with 0-2 years of field experience." Although this indicates that public relations specialist positions may require a bachelor's degree, it does not suggest that public relations specialist positions require a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

⁵ The AAO notes that, as was discussed above, since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish a position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). 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 147.

The U.S. news printout states, *inter alia*, "Most public relations specialists have bachelor's degrees in communications, journalism, public relations, marketing, or other relevant fields."⁶ Again, this suggests that *some* public relations workers *do not* have such a degree.

The printout from personalitydesk.com states, *inter alia*, "A bachelor's degree in a communications-related field combined with public relations experience is excellent preparation for a person interested in public relations work." That such a degree is excellent preparation for a public relations position does not suggest that such a degree is a minimum requirement.

The floridatechonline.com printout states, *inter alia*, "Many public relations specialists hold a bachelor's degree in marketing, communications, or business administration." Once again, this suggests that *some* public relations workers *do not* have such a degree.

The marketing-schools.org printout states, *inter alia*, "Most [public relations] specialists earn bachelor's degrees in public relations or marketing."⁷ This suggests that some public relations specialists do not earn such a degree.

The isseek.org printout states, *inter alia*, "A bachelor's degree in public relations, journalism, or communications is good preparation for this occupation. Other majors can qualify you as well." That earning such a degree is good preparation for such a position does not indicate that it is a minimum requirement. To the contrary, that printout makes clear that one may qualify for such a public relations specialist positions without a bachelor's degree in public relations, journalism, or communication.

Further, the isseek.org printout contains a table of statistics pertinent to the educational level attained by public relations specialists between the ages of 25 and 44. It indicates that one percent of that group do not have a high school diploma. An additional five percent have only a high school diploma or the equivalent. Another 11 percent have some college but not degree. An additional four

⁶ The first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of public relations specialist positions require at least a bachelor's degree in communications, journalism, public relations, marketing, or other relevant fields, it could be said that "most" public relations specialist positions require such degrees. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act.

⁷ As noted above, it cannot be found that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner.

percent have an associate's degree, but not a bachelor's degree. That table makes clear that not all public relations specialist positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. In fact, according to the statistics in that table, 21 percent of public relations specialists between 25 and 44 do not have any bachelor's degree at all.

None of the printouts provided suggest that public relations specialist positions, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy 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.

As stated earlier, in determining whether there is 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 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Counsel submitted a form letter from Mr. [REDACTED] director of [REDACTED] in which Mr. [REDACTED] stated that his business is in the petitioner's industry and is similar to the petitioner in size. It is noted that the record of proceeding lacks sufficient information to conduct a meaningfully substantive comparison of the business operations of [REDACTED] to the petitioner. The petitioner failed to provide any supplemental information to establish that the organization is similar to the petitioner. Thus, from the onset, this prong of the regulations has not been established. Mr. [REDACTED] further stated that, based on a job description that is not in evidence, the proffered position requires a bachelor's degree. However, it states that the bachelor's degree may be in marketing, business, economics, or a related subject. As was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty, or its equivalent, and does not indicate that a position is a specialty occupation position. Thus, Mr. [REDACTED] form letter

does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

As was noted above, counsel also provided vacancy announcements placed by other companies. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Marketing Communications Specialist for [REDACTED] a provider of cloud-based management and sales automation solutions, requiring a bachelor's degree in journalism, public relations, marketing, communications, or a related field and "1-3 years marketing and/or public relations experience";
2. Marketing Specialist for [REDACTED] a news dissemination firm, stating no educational requirement;
3. Marketing and Public Relations Specialist for the [REDACTED] a for-profit alliance of cancer centers, requiring a bachelor's degree in communications, marketing, public relations, journalism, or a related field, and "At least 5 years of communications experience, preferably in health care";
4. Media Contact Specialist for [REDACTED] a provider of online assessments and instructional programs for K-12 and higher education, requiring a bachelor's degree in communications, marketing, public relations, journalism, or a related field, and "Professional experience in a similar role";
5. PR Communications Specialist (Media Coordinator) for [REDACTED] a CAD/CAM software developer, stating no educational requirement but requiring at least three years' experience;
6. Public Relations Specialist for [REDACTED] a marketing communications agency, stating no educational requirement but requiring "three to four years PR agency experience";
7. Public Relations Specialist for [REDACTED] requiring a master's degree in public administration, communications, or a related field;
8. Employee Relations Manager for an unidentified firm in the restaurant industry requiring a bachelor's degree in human resources, business, or a related field, two years' experience in human resources, and two years' experience conducting investigations into sensitive issues;
9. Marketing Communications Specialist for [REDACTED] a provider of respiratory protection, requiring a bachelor's degree or equivalent in marketing or communications and "At least 3 years' experience within a marketing communications environment";
10. Public Relations Specialist for [REDACTED] requiring a "Bachelor's degree from a four year college in journalism, public relations communications, or another related field or equivalent" and "at least 2 years of PR or journalism experience, preferably in the consumer electronics industry";

11. Marketing and Communications Specialist – Content Marketing for [REDACTED]
[REDACTED] a marketing firm, requiring an unspecified bachelor's degree and:

Experience managing large scope projects that require coordination across internal and external teams under tight deadlines [and]

Prior experience in a marketing or client service environment, ideally including experience in traffic management.

The second, fifth, and sixth vacancy announcements state no educational requirement. The eleventh states a requirement of a bachelor's degree, but not in any specific specialty. Clearly, those vacancy announcements offer no support for the proposition that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry for positions parallel to the proffered position. To the contrary, they suggest that a minimum of a bachelor's degree *in a specific specialty* or its equivalent is not necessary for such positions.

The eighth vacancy announcement states that an otherwise undifferentiated degree in business would be a sufficient educational qualification for the position announced. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, it is not a degree in a specific specialty. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. As such, the eighth vacancy announcement provides no support for the proposition that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. Again, that vacancy suggests, to the contrary, that a minimum of a bachelor's degree in a specific specialty or its equivalent is not necessary for such positions.

Further, the petitioner's industry is airport and cargo handling services. None of the vacancy announcements have been shown to have been posted by a firm in the petitioner's industry, and most clearly are not in the petitioner's industry. As such, they do not provide support for the proposition that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions parallel to the proffered position *in the petitioner's industry*.

Further still, all but the second and seventh vacancy announcements require experience, whereas the petitioner has indicated that the proffered position is a Level I, entry-level, position.⁸ Those vacancy announcements have not been shown, therefore, to be for positions parallel to the proffered position.

Yet further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what

⁸ Again, see the discussion of Level I positions at U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

statistically valid inferences, if any, can be drawn from these announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁹

Thus, based upon a complete review of the record, the petitioner has not established 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

⁹ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of public relations specialist for firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not necessarily require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I public relations specialist, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of a public relations specialist's duties. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. This does not support the proposition that the proffered position is so complex or unique relative to other public relations specialist positions that it can only be performed by a person with at least a specific bachelor's degree.

As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.¹⁰

Evidence provided shows that the petitioner hired [REDACTED] to work in the proffered position, and that she has the equivalent of a U.S. bachelor's degree in communications. However, the record only demonstrates that the petitioner employed her from approximately December 6, 2011 to October 15, 2012, whereas the petitioner states that it was established during 2002. The record does not establish how many people the petitioner has employed in the proffered position or the educational credentials of anyone else, other than Ms. [REDACTED] whom the petitioner has ever

¹⁰ While a petitioner may believe or otherwise 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 a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation 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").

employed in the proffered position. That the petitioner previously hired one person in the proffered position and that person had a bachelor's degree in communications is insufficient to show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Further, the petitioner's COO stated, in his May 3, 2013 letter:

We attest that the requirement of a Bachelor Degree in Marketing, Communications, Economics, Business or related has been minimum qualification for Public Relations Specialist with our company.

Again, that an otherwise undifferentiated bachelor's degree in business is a sufficient educational qualification for the proffered position demonstrates that it is not a specialty occupation position.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as carrying on planning, managing, and implementing the development and communication of information designed to keep the business sector and aviation clients, informed of the [petitioner's] services and accomplishments; coordinating press relations including new product/service releases and articles; making arrangements for representatives; provide assistance to company personnel in writing and preparing letters and drafting articles made for the public; coordinating production of advertising and marketing materials, etc. have not been demonstrated to be so specialized and complex that the knowledge they require is usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of public relations specialist positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I public relations specialist position, a position for an entry-level employee with only a basic understanding of public relations work. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex relative to other public relations specialists that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to public relations.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any 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. The appeal will be dismissed and the petition denied for this reason.

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.