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



U.S. Citizenship
and Immigration
Services

DATE: JAN 23 2014

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 Director, California Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "non-profit charity adoption agency" which was established in 1992 and currently employs 34 personnel in the United States. The petitioner seeks to employ the beneficiary part-time in what it designates as an "adoption projects manager" position and 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 because the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, counsel's brief, and additional documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.¹ Accordingly, the appeal will be dismissed and the petition will remain denied.

The Law

The issue before the AAO is whether the position qualifies as a specialty occupation. 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 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:

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

Facts and Procedural History

In a "Summary of Oral Job Offer" submitted with the petition, the petitioner indicated that the beneficiary's duties included:

[D]irecting, developing, managing and overseeing adoption services between post-child-match and pre-post-adoption by working in conjunction with the President, Child Match Department, U.S. Immigration office, U.S. Consulate in China, China Central Adoption Authority CCCWA, [the petitioner's] Beijing Office and provincial representatives, travel agencies, and travelling adoptive families to ensure effective planning and execution of adoption project and process and to ensure the safe travel and return of travel adoptive families and their children.

The petitioner provided the required certified Labor Condition Application (LCA) which indicates that the occupational classification for the position is "Managers, All Others," SOC (ONET/OES) Code 11-9199, at a Level I (entry-level) wage. In a letter of support dated March 6, 2013, the petitioner noted its belief that the beneficiary is an "ideal candidate" for the proffered position because: he holds a Bachelor of Arts degree in English from a Beijing, China school; he obtained a Master's in Business Administration from the University of Texas; he has past experience working with the petitioner's agency in China; he has a Chinese background; he has English skills; and he has experience in the adoption field. The petitioner also provided a job description of the proffered position which listed the qualifications, in pertinent part, as an "MBA, MA or BA with two year related work experience." The petitioner's initial job description for its adoption projects manager included the following duties:

1. Directing – Project, produce and implement department operational direction, goal and plan on a monthly and annual basis to ensure matching with the overall agency strategic plan.
2. Managing – Manage daily operation of the adoption service between post-child match and pre-post adoption to ensure effective and accurate performance of program and service.
3. Supervision – Supervise the Adoption Travel Department and China representative to ensure service quality and customer satisfaction.
4. Financial planning – Assist the President and CEO with month, quarterly and annual budgeting and financial planning. Constantly negotiate with hotel, and travel companies on agency and adoptive families' behalf and monitor regularly the cost and expenses.
5. General Communication – [E]stablish and maintain smooth and clear communication with all parties involved during the important period of post-child-match and pre-post-adoption to ensure all necessary adoption paper work, clearance, appointment, travel arrangement, in-China services are accurately and professional prepared for adoptive families. Monitor travel packets and update with any new information. Notify families when appropriate to download packet according to time specified by department. Be on call 24/7 while families are in China receiving their adoptive children.
6. Data Entry/Reports – Input incoming data related to the Travel Department and produce appropriate reports (group lists, travel training, Consulate reports, travel plans, etc.) on a calendar or request basis.
7. File Preparation – Prepare physical files, database files, including family files, travel folders, and Travel Conference folders. File all travel related documents.
8. Immigration Processing – Assist families in processing paperwork for immigration requirements as it pertains to international adoption.
9. Traveler Communication – Communicate in a timely manner with in-process adoptive families regarding travel-related issues via phone, fax, and e-mail on a daily basis.
10. Adoption Travel – Work in conjunction with the travel manager and CEO, travel agencies and China representatives to ensure effective planning and execution of travel for adoptive families by producing adoption travel group list, costs, plans, and travel training. Data entry for travel related information in [the petitioner's] database.
11. Input pre-paid travel cost payments into the database, track all non-payments, deposit prepaid travel payments, and maintain bank account information.
12. Verify final bill information from in-China representatives. Wire money to our representatives in China based on approved final bills for each [petitioner's] group.
13. Perform other duties as assigned by the Executive Director.
14. Heritage Tour – Plan, prepare and execute scheduled Heritage Tours in conjunction with the Travel Manager and other Travel Assistants. Be a main communicator and liaison between families and the CCCWA (or other Heritage Tour planning agency). Tasks include but not limited to: phone/email

correspondence, data entry, calculation of tour cost for individual families, follow-up regarding any praise and/or complaints for quality improvement.

15. Other duties as seen appropriate by President and CEO.

Upon review, the director requested further detail regarding the proposed position, sufficient to establish it as a specialty occupation. The director outlined the specific evidence to be submitted.

In response, the petitioner provided a similar job description for the proffered position and also included the amount of time the beneficiary would spend on each duty. The petitioner listed the beneficiary's job duties and allocated the time to be spent on each specific duty as follows:

1. Directing – Project, produce and implement department operational direction, goal and plan on a monthly (2 hours/week, 8 hours/month) and annual (88 hours/year, 10% of time allocation) basis to ensure matching with the overall agency strategic plan.
2. Managing – Manage daily operation of the adoption service between post-child match (as soon as an adoptive family receive[s] a child match from China) and pre-post adoption (before a family returns from China to start their post-adoption support by [the petitioner]) to ensure effective and accurate performance of program and service (2 hours a week, 10%).
3. Supervision – Supervise, lead and manage the Adoption Travel Department (4 fulltime employees) and China representatives (35 representatives in 20 provinces serving 402 orphanages) to ensure service quality and customer satisfaction (2 hours/a week, 10%).
4. Financial planning – Assist the President and CEO with monthly, quarterly and annual budgeting and financial planning. Constantly negotiate with hotel, and travel companies on agency and adoptive families' behalf and monitor regularly the cost and expenses (4 hours a month, 5%).
5. General Communication – [E]stablish and maintain smooth and clear communication with all parties involved during the important period of post-child-match and pre-post-adoption to ensure all necessary adoption paper work, clearance, appointment, travel arrangement, in-China services are accurately and professionally prepared for adoptive families. Monitor travel packets and update with any new information. Notify families when appropriate to download packet according to time specified by department. Be on call while families are in China receiving their adoptive children or doing heritage tour. (4 hours/week, 20%)[.]
6. Immigration Processing – Assist families in processing paperwork for immigration requirements as it pertains to international adoption (1 hours/week, 5%).
7. Traveler Communication – Communicate in a timely manner with in-process adoptive families regarding travel-related issues via phone, fax, and e-mail on a daily basis (2 hours/week, 10%).
8. Adoption Travel – Work in conjunction with the travel manager and CEO, travel agencies and China representatives to ensure effective planning and execution of

- travel for adoptive families by producing adoption travel group list, costs, plans, and travel training. Data entry for travel related information in [the petitioner's] database. (1.5 hours/week, 7.5%)[.]
9. Input pre-paid travel cost payments into the database, track all non-payments, deposit prepaid travel payments, and maintain bank account information. (.30 hour/week, 1.5%)[.]
 10. Verify final bill information from in-China representatives. Wire money to our representatives in China based on approved final bills for each [petitioner's] group. (.30 hour/week, 1.5%)[.]
 11. [redacted] Tour – Plan, prepare and execute scheduled [redacted] Tours in conjunction with the Travel Manager and other Travel Assistants. Be a main communicator and liaison between families and the China Center for Children Welfare & Adoption (or other [redacted] Tour planning agency). (3 hours/week, 15%)[.]
 12. Other duties as seen appropriate by President and CEO (.90 hour/week, 4.5%)[.]

Without explanation, the second iteration of the job description removed the following duties as duties of the proffered position:

1. Data Entry/Reports – Input incoming data related to the Travel Department and produce appropriate reports (group lists, travel training, Consulate reports, travel plans, etc.) on a calendar or request basis;
2. File Preparation – Prepare physical files, database files, including family files, travel folders, and Travel Conference folders. File all travel related documents;
3. Perform other duties as assigned by the Executive Director; and
4. The examples of duties related to the [redacted] including such as phone/email correspondence, data entry, calculation of tour cost for individual families, follow-up regarding any praise and/or complaints for quality improvement.

Also on the revised job description, the petitioner changed the qualifications of the proffered position to indicate that the qualifications of the successful applicant for the proffered position included a "BA or above in the areas of business management, Chinese language, or public Communication." The petitioner stated that the individual in the proffered position needs a B.A. or higher degree because:

- All [of the petitioner's] managers are required to have a B.A. or higher degree[;]
- All staff supervised by Adoption Project Manager possesses a B.A. degree. You are not qualified to supervise them without a B.A. or higher degree yourself[;]
- The complexity of China adoption and heritage tour require someone with a minimum of a B.A. for this position[;]
- Bi-lingual and management skills are extremely important for this position[; and]
- All our competitors hire professionals with B.A. or higher degrees for similar positions[.]

The petitioner asserted that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner listed five adoption agencies that it claimed are similar to the petitioner in "size and operational expenses": [REDACTED]

[REDACTED] The petitioner noted that "these agencies have one or several employees in similar positions as Adoption Project Manager/Consultant/coordinator/assistant director to lead and manage what our Adoption Project Manager is required to do."

The petitioner also provided Internet print-outs that include information regarding employees of [REDACTED]. The print-out from [REDACTED] Internet site lists its employees in positions such as travel and post adoption administration, travel coordinator, assistant director, adoptions program coordinator, and family coordinator. It indicated that one employee held a master's degree in education and that others held bachelor's degrees in various disciplines including communications, psychology/human services and youth ministry, Arabic, and social work. The print-out also indicates several individuals held degrees; however, specific fields of study were not identified.

[REDACTED] website print-out listed employees in the positions of program director, adoption consultant, outreach coordinator, and waiting children program coordinator. The print-out indicates that those employees hold bachelor's degrees in psychology, corporation communications, and master's degrees in social work. One employee's profile does not list a specific degree.

[REDACTED] website print-out shows a profile of an employee in the position of China Program Director. The profile states that the China Program Director holds two degrees from universities in Texas; however, her specific fields of study are not identified.

The petitioner also provided two advertisements for positions posted on the Internet: (1) an adoptions case management supervisory position requiring either a bachelor's degree in social work or related area with four years experience in human services or child welfare programs, or, a master's degree in social work or related area of study and two years experience in human services or child welfare programs; and (2) an adoption specialist position requiring a master's degree in a human services field.

The petitioner also claimed that the proffered position is so complex and unique that it can be performed only by an individual with a degree. The petitioner indicated:

In today's adoption world, it is almost impossible to get a job without at least a B.A. degree due to international adoption service's complexity that requires its employees to possess higher education that gives them stronger foundation in the area of writing, communicating, budgeting, managing, cross-cultural understanding, customer service, and a whole range of other necessary professional skills that only higher learning institutes can offer.

The petitioner stated that it "always requires a degree or its equivalent for all its positions throughout [its] 20 years history because every position is considered a specialty position." The petitioner provided its job descriptions for a manager of application department, a travel manager, a case aide – records management & archive, a case manager, a child match manager, a translator, a post adoption manager, and a dossier manager. Each description lists a bachelor's degree or its equivalent as one of the qualifications for the position. None of the descriptions specify that the bachelor's degrees must be in specific disciplines. The petitioner indicated further that it had previously hired four adoption project/travel managers and that each of these managers had at least one bachelor's degree and that the individuals working under them also had bachelor's degrees. The petitioner included the resumes of its previously employed adoption project/travel managers showing that the employees had degrees in communication studies, speech communications, biblical literature, and social work. The petitioner also claimed that at least a bachelor's degree is required for international adoption services positions.

Upon review of the evidence in the record, the director denied the petition, determining that the record did not establish the proffered position is a specialty occupation. The director identified the duties of the proffered position as aligning most closely with the Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) report on the duties of an administrative services manager. The director noted that the *Handbook* did not indicate that a baccalaureate degree in a specific field of study is the minimum educational requirement for an administrative services manager position. The director referenced the job advertisements, the information regarding corporate staff of other adoption agencies, and the petitioner's own job requirements and previously employed individuals. The director determined that this evidence was insufficient to establish: a bachelor's degree in a specific discipline was a common requirement in organizations similar to the petitioner for positions that are parallel to the proffered position; that the proffered position is unique or complex or specialized; or that the petitioner normally requires a degree or its equivalent in a specific discipline for the proffered position.

On appeal, counsel for the petitioner asserts that the proffered position of adoption projects manager is not an administrative services manager position. Counsel avers that the proffered position is complex and requires different bodies of specialty knowledge to fulfill all of the job duties. Counsel contends that the proffered position combines the duties and specialty skills of several specialty occupations, such as translators and interpreters, social and community managers, and social workers, and thus the position is not an administrative services manager position. Counsel notes that the proffered position requires that the successful applicant be bi-lingual and that according to the *Handbook*, interpreters and translators typically need a bachelor's degree. Counsel also claims that the duties of the proffered position incorporate the duties of a social and community service manager and that the *Handbook* reports that social and community service managers need at least a bachelor's degree and some work experience. Counsel contends that the successful applicant will also perform social work duties and that the *Handbook* indicates that at least a bachelor's degree and sometimes a master's degree are required to perform social work duties. Counsel asserts that the beneficiary's bachelor's degree in English from a Chinese University, his master's degree in business administration, and his over 18 years of experience as the petitioner's Chinese representative establishes that the beneficiary has met the requirements to perform all of the duties of the proffered position.

Counsel also contends that the proffered position is complex and unique because it requires the successful applicant to be a professional translator and interpreter, to be a social worker, and to be a social and community service manager. Counsel claims that the petitioner has also established that it normally requires a degree or its equivalent for the position. Counsel references the previously submitted information regarding the petitioner's employees and asserts that the Adoption Projects Manager will supervise four employees who have bachelor's degrees in various fields of study. Counsel avers that the individual in the proffered position needs a higher degree than the supervised employees. The petitioner provides a copy of its organizational chart depicting the placement of the proffered position over a travel department manager, who reports directly to the president and who in turn supervises travel specialists, [REDACTED], the petitioner's China representatives, and the [REDACTED] Tour Coordinator.

Counsel further contends that the proffered position is special and complex because the petitioner is engaged in different and more complex adoptions than ordinary adoption agencies. Counsel notes that the petitioner has two special programs, a [REDACTED] and the [REDACTED] and that it also provides comprehensive services to adoptive families and their adopted children before and after the adoption. Counsel avers that to fulfill the requirements of the proffered position and to perform the associated special and complex duties, the successful applicant must have at least a bachelor's or higher degree.

Analysis

Preliminarily, we observe that the petitioner made a material change to the petition in its response to the director's RFE. The petitioner first states that it requires an "MBA, MA or BA with two year[s] related work experience." In response to the RFE, the petitioner changed its requirement to "BA or above in the areas of business management, Chinese language, or public Communication." The purpose of the RFE 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 an RFE, a petitioner may not make material changes to the petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). 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 RFE changed the claimed entry requirements for the position, without explanation. Accordingly, the analysis of the proffered position will be based on the petitioner's initial entry requirements for the position.

In any event, the petitioner has not shown that either iteration of its claimed entry requirements denote a requirement in a specific specialty. With regard to the requirement of an "MBA, MA or BA with two year related work experience," the petitioner has not shown that such a degree with two years of related work experience is equivalent to a degree in a specific specialty. Even if considering the petitioner's claim in response to the director's RFE that the proffered position requires a "BA or above in the areas of business management, Chinese language, or public Communication," the petitioner has not established how these fields are directly related to each

other such that they comprise a 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 business management, Chinese language, and public communication, 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). As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails to consistently identify what specialty the allegedly required degree must be in. Even if the position may be performed by an individual with a "BA or above in the areas of business management, Chinese language, or public Communication," the acceptance of one of three disparate degrees only supports the petitioner's implied assertion that the proffered position can be performed by individuals with any one of these degrees. Absent evidence to the contrary, the fields of business management, Chinese language, and public communication are not closely related specialties, and the petitioner fails to establish how these fields are directly related. Accordingly, as such evidence fails to establish a minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

The petitioner titles the proffered position "Adoption Projects Manager," and identifies the position as a "manager, all others" on the certified LCA. The *Handbook* does not include a chapter on adoption projects managers and an occupation identified only as manager, as listed on the LCA, includes a number of possible occupations.² Accordingly, the director reviewed the

² All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>. The *Handbook* reports on financial managers, advertising, promotions and marketing managers, food service and lodging managers, health services managers, property managers, natural science managers, purchasing managers, and engineering managers, as well as administrative services managers and social and community service managers to name just a few of the types of managerial positions.

duties of the proffered position as described by the petitioner to ascertain a corresponding occupation in the *Handbook*. The director determined that the description of duties corresponded most closely to the duties of an administrative services manager.

The *Handbook's* chapter on administrative services managers states in pertinent part:

Administrative services managers plan, direct, and coordinate supportive services of an organization. Their specific responsibilities vary by the type of organization and may include keeping records, distributing mail, and planning and maintaining facilities. In a small organization, they may direct all support services and may be called the *business office manager*. Large organizations may have several layers of administrative managers who specialize in different areas.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Administrative Services Managers," <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-2> (last visited Jan. 7, 2014).

The *Handbook* also listed typical duties of an administrative services manager as including:

- Buy, store, and distribute supplies
- Supervise clerical and administrative personnel
- Recommend changes to policies or procedures to improve operations, such as changing what supplies the organization keeps and improving how the organization handles records
- Plan budgets for contracts, equipment, and supplies
- Monitor the facility to ensure that it remains safe, secure, and well maintained
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems
- Ensure that facilities meet environmental, health, and security standards and comply with government regulations

Id.

The petitioner's initial description of job duties appeared to include some supervision of administrative employees and to involve some administrative tasks, such as inputting data for travel-related information, preparing files, assisting families in processing paperwork, communicating daily with adoptive families regarding travel-related issues, and verifying bills and wiring money. The petitioner, without explanation, removed the tasks of inputting data, preparing files, and preparing correspondence and following-up complaints and praise relating to the [REDACTED] in its response to the director's RFE. 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). Aside from this discrepancy in the two descriptions, the totality of the petitioner's description corresponds to the *Handbook's* description of the duties of an administrative services

manager in only the most general way. That is, an administrative services manager appears to plan, direct, and coordinate supportive services of an organization and the organization's equipment and facility, and does not appear to manage the travel and operational tasks associated with international adoption. Although the petitioner alludes to the beneficiary's supervision of individuals in supportive roles, keeping records, and planning travel budgets, the proffered position does not directly correspond to the duties of an administrative services manager as that occupation is depicted in the *Handbook*. The director's determination to the contrary is withdrawn.

Upon review of the description of the petitioner's description of duties and the submitted certified LCA, the AAO has determined that the proffered position includes some general managerial duties. The *Handbook*, in its chapter on "Top Executives" references the occupation of a general and operations manager. The *Handbook's* overview of this occupation describes it as follows:

General and operations managers oversee operations that are too diverse and general to be classified into one area of management or administration. Responsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules, assign work, and ensure projects are completed. In some organizations, the tasks of chief executive officers may overlap with those of general and operations managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (last visited Jan. 7, 2014).

Moreover, the *Handbook* reports: "[a]lthough education and training vary widely by position and industry, many top executives have at least a bachelor's degree and a considerable amount of work experience." The *Handbook* reports further:

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. College presidents and school superintendents typically have a doctoral degree in the field in which they originally taught or in education administration. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a Master of Business Administration (MBA).

Top executives who are promoted from lower level managerial or supervisory positions within their own firm often can substitute experience for education. In industries such as retail trade or transportation, for example, people without a college degree may work their way up to higher levels within the company and become executives or general managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited Jan. 7, 2014).

Accordingly, the *Handbook* does not report that a general manager's position requires a bachelor's degree in a specific discipline.

On appeal, counsel asserts that the position actually combines the duties of a social and community service manager, an interpreter/translator, and a social worker. Counsel concludes that all of these occupations are specialty occupations and thus, the proffered position in this matter is also a specialty occupation.³ Although the proffered position may include some of the duties of each of these three occupations, the petitioner has not provided the necessary detailed information to ascertain that the individual in the proffered position would primarily perform any of the specific duties related to these occupations. For example, the *Handbook* reports:

Social and community service managers coordinate and supervise social service programs and community organizations. They direct and lead staff who provide social services to the public.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Social and Community Service Managers," <http://www.bls.gov/ooh/management/social-and-community-service-managers.htm#tab-2> (last visited Jan. 7, 2014).

The *Handbook* indicates that social and community managers typically do the following:

- Discuss with members of the community what types of programs and services are needed
- Design and oversee programs to meet the needs of the target audience or community

³ It is noted that, where a petitioner seeks to employ a beneficiary in three distinct occupations, the petitioner should file three separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file three separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. See generally 8 C.F.R. § 214.2(h).

Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. See generally 8 C.F.R. § 214.2(h); 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. Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

- Create methods to gather information, such as statistics, about the impact of their programs
- Supervise staff, such as social workers, who provide services to clients
- Analyze data to determine the effectiveness of programs
- Suggest and carry out improvements to programs and services
- Develop and manage budgets for programs and organizations
- Get funding for programs through the agency's budget process or fundraising.

Id.

The petitioner's indication that the individual in the proffered position will oversee the petitioner's adoption program, supervise travel managers, and assist with the travel budget portion of its adoption program may correspond generally to the *Handbook's* outline of this occupation. However, the petitioner does not identify this position as a social and community service manager position on the LCA submitted with the petition. If the petitioner considered this position primarily a social and community service manager position, an LCA with the corresponding SOC (ONET/OES) code of 11-9151.00 should have been certified and submitted with the petition.⁴ Of note, the *Handbook* also reports that "[s]ocial and community service managers need at least a bachelor's degree and some work experience" and that "a bachelor's degree in social work, urban studies, public administration, or a related field is the minimum requirement."

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Social and Community Service Managers," <http://www.bls.gov/ooh/management/social-and-community-service-managers.htm#tab-4> (last visited Jan. 7, 2014).

⁴ 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. While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. As such, if the position is a social and community service manager, the petitioner was required to provide at the time of filing an LCA certified for SOC code 11-9151.00, not 11-9199.00, in order for it to be found to correspond to the petition.

However, the petitioner does not specify that a bachelor's degree in any of the academic disciplines referenced in the *Handbook* for a social and community service manager is required to perform the duties of its adoption projects manager.⁵ The lack of such a requirement further undermines the claim that the proffered position is actually a social and community service manager position.

Similarly, the proffered position may encompass some of the broadly-stated duties of a direct-service social worker. The *Handbook* reports that a direct-service social worker's duties typically include:

- Identify people who need help
- Assess clients' needs, situations, strengths, and support networks to determine their goals
- Develop plans to improve their clients' well-being
- Help clients adjust to changes and challenges in their lives, such as illness, divorce, or unemployment
- Research and refer clients to community resources, such as food stamps, child care, and healthcare
- Help clients work with government agencies to apply for and receive benefits such as Medicare
- Respond to crisis situations, such as natural disasters or child abuse
- Advocate for and help clients get resources that would improve their well-being
- Follow up with clients to ensure that their situations have improved
- Evaluate services provided to ensure that they are effective

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Social Workers," <http://www.bls.gov/ooh/community-and-social-service/social-workers.htm#tab-2> (last visited Jan. 7, 2014).

The *Handbook* also states the following:

Social workers help people cope with challenges in every stage of their lives. They help with a wide range of situations, such as adopting a child or being diagnosed with a terminal illness. Social workers work with many populations, including children, people with disabilities, and people with addictions.

Id.

The only duties of the proffered position that may fall within the general purview of the duties of a social worker are duties that broadly pertain to helping clients with government agencies and to

⁵ Moreover, even if the proffered position is characterized as a social and community service manager position, the beneficiary in this matter does not hold "a bachelor's degree in social work, urban studies, public administration, or a related field." Thus, the beneficiary would not qualify to perform the duties of such a position.

adjusting to change in their lives. The petitioner does not detail the specific duties of the proffered position that correspond to the work of a social worker. Moreover, the *Handbook* reports that a bachelor's degree is required for most direct-service social work positions, and that a bachelor's degree in social work is the most common requirement for entry-level positions. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Social Workers," <http://www.bls.gov/ooh/community-and-social-service/social-workers.htm#tab-4> (last visited Jan. 7, 2014). As noted above, the petitioner does not indicate that it requires a bachelor's degree in social work to perform the duties of the position.⁶

Regarding the petitioner's claim that the beneficiary will be required to perform the work of an interpreter/translator, we find the spectrum of proposed duties would include at least some duties that appear to relate to the occupational category of an interpreter/translator. At the same time, however, the AAO also finds that the duty descriptions are not sufficiently detailed to identify any substantive aspects that would distinguish the proposed duties, or the position that they comprise, as so specialized, complex, and/or unique that their actual performance would require at least a bachelor's degree in a specific specialty or its equivalent. As clearly evident in the above quotations of the record's duty descriptions, they describe the proposed duties exclusively in terms of general functions that the beneficiary would perform. As such, they do not inform the AAO of the substantive nature of the work that the beneficiary would perform, the substantive application of specialized knowledge that performance of those duties would involve, or any particular level of educational attainment in any specialty that would be required to perform them.

Moreover, the *Handbook* reports that interpreters and translators typically need a bachelor's degree but that the most important requirement is that they be fluent in English and at least one other language. Regarding the educational requirements for interpreters/translators, the *Handbook* reports: "[t]he education backgrounds of interpreters and translators vary, but it is essential that they be fluent in English and at least one other language." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Interpreters and Translators," <http://www.bls.gov/ooh/media-and-communication/interpreters-and-translators.htm#tab-4> (last visited Jan. 7, 2014). The *Handbook* does not identify a specific field of study that is necessary to perform the duties of an interpreter/translator. Thus, the *Handbook* does not support the assertion that such a position is a specialty occupation.

Upon review of the duties of the proffered position, the description of duties does not fall neatly within the purview of any specific occupation detailed in the *Handbook*. Furthermore, the *Handbook* does not support the assertion that the duties of the proffered position could only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent. In such instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such cases, it is the

⁶ Again, as the beneficiary does not have a degree in social work and accordingly would not qualify to perform the duties of a direct-service social work position.

petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, the AAO will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In this matter, the record does not include evidence from other objective, authoritative sources regarding the normal minimum requirement for entry into the proffered position. The description of duties and requirements needed to qualify for the position also do not establish a normally minimum requirement for entry into the position. The petitioner, throughout the record, emphasizes that it always requires a Bachelor of Arts degree for positions within its organization. The petitioner, however, does not consistently specify that the bachelor's degree must be in a specific discipline as is required to establish that a position is a specialty occupation. Moreover, the record in this matter does not establish that the duties of the proffered position require a precise and specific course of study that relates directly and closely to the position of adoption projects manager.

As stated above, the petitioner, who bears the burden of proof in this proceeding, fails to establish that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent. Based on the above analysis of the evidence contained in the record, the AAO finds that the petitioner has failed to demonstrate that the proffered position normally requires the incumbent to possess a high level of specialized knowledge that may be obtained only through at least a baccalaureate degree in a specific discipline or its equivalent for entry into that particular position. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner in this matter also fails to establish that the proffered position satisfies either of the two alternative prongs set out at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). 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 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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. In support of its claim that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted Internet print-outs from three other international adoption agencies. However, the petitioner does not identify which of the several different positions listed on the other agencies' websites most closely parallel the proffered position. Moreover, the Internet print-outs do not list the duties of the various positions held in other agencies and thus, it is not possible to ascertain if any of the other agencies' positions are parallel to the proffered position. In addition, the personnel employed in the various positions at other international adoption agencies held a wide variety of degrees. The record

does not include evidence identifying particular positions with duties parallel to the proffered position that indicate a degree in a specific discipline is a common degree requirement.

Furthermore, the petitioner has not demonstrated that the two job advertisements submitted are from organizations similar to the petitioner. Further, the job advertisements are for positions that do not include duties parallel to the proffered position and the degrees required are not degrees referenced as a qualification for the proffered position. Furthermore, even if the organizations were similar and the duties in the advertisements were parallel to the duties of the proffered position, which they are not, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these two job postings with regard to the common educational requirements for entry into parallel positions in similar international adoption agencies. *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").

The record does not include probative evidence establishing that organizations similar to the petitioner require a bachelor's degree in a specific discipline, or its equivalent, to perform the duties of positions that are actually parallel to the position proffered in this matter.

The petitioner also failed to 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." To begin with and as discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty or its equivalent. The petitioner indicated that because of the complexity in the adoption world, employers require that employees possess higher education and a range of necessary professional skills taught in institutes of higher learning. The petitioner asserted that the complexity of Chinese adoption and its [redacted] program required someone with a minimum of a Bachelor of Arts degree to perform the duties of the position. However, the petitioner did not detail which particular duties required a bachelor's degree in a specific discipline and how a detailed course of study leading to a specialty degree is necessary to perform those duties. An examination of both iterations of the petitioner's description of the duties of the position does not reveal duties that are more unique or complex than the duties of a general manager, an occupation that has not been established to require a baccalaureate or higher degree in a specific discipline.

In response to the director's RFE, the petitioner claimed that the beneficiary's degree in English from a Chinese university and his master's degree in business administration prepared him to perform the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (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.]; ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). The generalized level of the duty descriptions do not provide a substantive basis for a finding that, in the aggregate, the proposed duties would comprise a position so complex or unique that it could only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner has not satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, we consider whether the petitioner's prior history of recruiting and hiring for the proffered position establishes the proffered position as a specialty occupation. Again, the petitioner does not state that it requires a bachelor's degree in a specific discipline to perform the duties of the proffered position. A review of the education of the petitioner's previously employed individuals in the proffered position also fails to support the petitioner's claim that it normally hires only individuals with a degree in a specific discipline. The resumes of [REDACTED] the four individuals the petitioner identified as employed as "Adoption Project/Travel Managers," indicate these individuals have degrees in communication studies, speech communications, biblical literature, and social work, respectively. The petitioner does not detail the precise and specific course of study common to these individuals' majors that relates directly and closely to the position in question. The evidence does not establish that a bachelor's degree *in a specific discipline*, or its equivalent, is necessary to perform the duties of the position.

Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. The petitioner must establish that 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 specialist or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation 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 proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in 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 Defensor v. Meissner, supra*. Here, the petitioner states that it "always requires a degree or its equivalent for all [of] its positions throughout [its] 20 years history because every position is considered a specialty position." Such a statement confirms that the petitioner requests all of its proposed employees to hold a bachelor's degree regardless of the particular position it is seeking to fill. The petitioner's submission of its advertisements for a variety of positions, all listing a general bachelor's degree as a qualification, further demonstrates that the petitioner does not differentiate amongst the variety of specific disciplines when hiring for any of its positions. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its 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. Here, the AAO incorporates by reference and reiterates its earlier discussions about the nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge at a level usually associated with at least a bachelor's degree in a specific discipline, or its equivalent. Insufficient evidence was provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than other managerial employees. The petitioner's suggestion that because the beneficiary will supervise others who have bachelor's degrees, he must also have a bachelor's degree is not supported with any objective evidence. The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than a position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.⁷

The record does not include evidence or argument to support that the proffered position is one with specialized and complex duties. The petitioner fails to establish that the proffered position satisfies 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.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered

⁷ The petitioner in this matter has designated the proffered position as a Level I position on the submitted LCA, indicating that it is a position for an entry-level position for an employee who has only basic understanding of the occupation. 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. Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. 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).

position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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; *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.