



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: MAR 04 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on January 15, 2010. In the Form I-129 visa petition, the petitioner describes itself as an educational services organization established in 1845. In order to employ the beneficiary in what it designates as an event coordinator 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 on March 11, 2010, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserted that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. Counsel submitted a brief and additional evidence in support of this assertion. The AAO reviewed the evidence, but dismissed the appeal as moot. Counsel subsequently submitted a motion to reconsider, which the AAO dismissed for failing to meet the applicable filing requirements; however, the AAO *sua sponte* reopened the proceeding on February 4, 2013.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; (5) the Form I-290B and supporting documentation filed on appeal; (6) the AAO's decision dated April 5, 2012; (7) the Form I-290B and supporting documentation filed on motion; and (8) the AAO's decisions dated February 4, 2013. The AAO reviewed the record in its entirety before issuing its decision.<sup>1</sup>

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

## **I. Factual and Procedural Background**

In this matter, the petitioner stated in the Form I-129 petition that it seeks the beneficiary's services as an event coordinator to work on a part-time basis (30 hours per week) at a rate of pay of \$16.12 per hour. In an affidavit dated January 12, 2010, the petitioner stated the following regarding the duties of the proffered position:<sup>2</sup>

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

<sup>2</sup> The AAO observes that this affidavit was provided by [REDACTED] in the petitioner's Department of Communication Studies. He states that he has 22 years of experience teaching a class on the employment interview process and that he published a book on the same subject. The AAO notes, however, that the petitioner has represented that the beneficiary will be employed by the [petitioner's] "B" Association, a student athlete alumni association located in the petitioner's athletics department. The source of Mr.

The job's primary responsibilities are:

1. Assisting in the development, planning, and execution of "B" Association alumni events and activities.
2. Representing the "B" Association in student athlete leadership groups.
3. Establishing and maintaining relationships with current [REDACTED] student athletes.
4. Assisting with the updating of the "B" Association website.
5. Preparing a variety of status reports regarding important issues voiced by current student athletes.
6. Communicating "B" Association's goals, information, plans, and activities to coaching staffs relevant to their specific sports program.
7. Serving as liaison to [the petitioner's] international student athletes.

The job also lists as additional responsibilities the following:

1. Participating in marketing events such as seminars, trade shows, and telemarketing events
2. Following-up for collection of payment
3. Responsible for distribution and pickup of shipping items
4. Preparing "B" Room for banquets and other "B" Assn functions
5. Other duties as assigned

In the affidavit accompanying the Form I-129 petition, the petitioner stated the requirements for the proffered position as "a Bachelor's degree in Marketing, Event Management or Communication and the skills and knowledge outlined in the position description." The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of his academic credentials, skills, and experience as a student athlete with the petitioner. The petitioner provided a copy of the beneficiary's transcript and diploma, issued by the petitioner, indicating that the beneficiary was granted a Bachelor of Arts in Speech Communication in December 2008. In addition, the petitioner provided the beneficiary's resume.

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[REDACTED]'s knowledge and role in connection with the proffered position is not apparent from the evidence of record.



The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition, which designates the proffered position as corresponding to the occupational classification "Meeting and Convention Planners" - SOC (ONET/OES) code 13-1121, at a Level I (entry level) wage.

The petitioner provided documents in support of the petition, including an unsigned memorandum of understanding for the petitioner's non-contract employees, and evidence pertaining to the petitioner's operations.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on January 26, 2010. The AAO notes that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position is a specialty occupation. The director outlined the evidence to be submitted. Amongst other evidence, the petitioner was asked to provide a more detailed description of the work to be performed by the beneficiary, along with the percentage of time to be spent on each duty, the educational requirements for the specific duties, etc.

On February 26, 2010, the petitioner responded to the director's RFE with a submission of additional evidence. The submission included a document described by the petitioner as a detailed job description for the proffered position. The document provided the following revised description of the proffered position:

<b>Essential Functions</b>	<b>Pct of Time</b>
• Banquet Organization: Coordinate all aspects of the [petitioner's] annual Athletics Hall of Fame Banquet	20.00%
• Game Day Events: Plan and operate game day activities that involve [the petitioner's] letterwinners. This includes activities within all 18 intercollegiate athletic programs.	40.00%
• [Petitioner's] Network Liaison: Work with the [Petitioner's] Network to solicit and coordinate participation of letterwinners to summer football, basketball, and baseball alumni events.	20.00%
• Fundraising: Assist the Executive Director of the [Petitioner's] B Association in soliciting membership and donor contributions	10.00%
• Other: Other duties as assigned by the Executive Director of the [Petitioner's] B Association	10.00%

In an affidavit dated February 24, 2010, also provided in response to the director's RFE, the petitioner's associate athletic director repeated these duties of the proffered position, and indicated that the category of "Other" includes the following duties:



- Updating the "B" Association website
- Preparing a variety of status reports regarding important issues voiced by current student athletes; and
- Serving as a liaison to [the petitioner's] International student athletes.

The petitioner also provided the following additional documents in response to the RFE: (1) position descriptions for three other positions; (2) a letter from [redacted] associate director of the petitioner's conference and event management department; and (3) a letter from [redacted] professor at [redacted]

The director reviewed the information provided in the initial H-1B petition and in response to the RFE. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on March 11, 2010.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

## **II. Beyond the Director's Decision**

To ascertain the intent of a petitioner, U.S. Citizenship and Immigration Services (USCIS) must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through attainment of at least a baccalaureate degree in a specific discipline. The AAO finds that the petitioner has not done so.

The descriptions of the beneficiary's duties in the record of proceeding lack the specificity and detail necessary to support the petitioner's contention that the position is a specialty occupation. The job descriptions fail to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the

correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. Moreover, the petitioner's assertion that the proffered position qualifies as a specialty occupation is conclusory and unpersuasive, as it is not supported by the job descriptions or substantive evidence.

In the instant case, the AAO observes that the duties of the proffered position, as described by the petitioner, have been stated in generic terms that fail to convey the actual tasks the beneficiary will perform on a day-to-day basis. The job descriptions provided by the petitioner do not adequately convey the specific tasks the beneficiary is expected to perform to establish eligibility for H-1B classification.

Although the director requested that the petitioner provide a more detailed description of the proffered position, the petitioner elected to provide a different, but also vague list of duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will be expected to utilize 20% of his time coordinating all aspects of the petitioner's annual banquet, without providing further explanation as to what specific tasks such coordination will entail. The petitioner does not explain the beneficiary's specific role and how the performance of this duty will be carried out within the scope of the petitioner's operations.

Further, the petitioner stated that the beneficiary will spend 40% of his time planning and operating game day activities. However, the petitioner did not provide a description of such activities or further explain the particular duties that the beneficiary will engage in to "plan and operate" these activities. The petitioner's statement does not explain the substantive application of knowledge involved or any particular educational attainment associated with such application. Similarly, the petitioner claims that the beneficiary will spend 20% of his time working with the petitioner's network for the participation of student athletes in alumni events. This statement fails to convey sufficient details regarding the nature and scope of the beneficiary's employment, and provides little insight into the actual tasks that the beneficiary will perform.

Additionally, the petitioner claims that the beneficiary will assist in soliciting membership and donor contributions, but fails to sufficiently define how this translates to specific duties and responsibilities as the phrase "assist" does not delineate the actual work the beneficiary will perform. Moreover, the petitioner states that the beneficiary will complete other duties as assigned by the executive director, such as updating the website, preparing status reports, and serving as a liaison to international student athletes. The petitioner fails to sufficiently define how these tasks entail the need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty.

Thus, upon review, it is not evident that the proposed duties as described, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. That is, to the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested. The job descriptions do not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and



practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities.<sup>3</sup> That is, the overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's operations. Thus, the petitioner has failed to demonstrate how the performance of the duties of the proffered position, as described by the petitioner, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

Further, the AAO observes that the petitioner materially altered the duties of the proffered position in response to the RFE. Specifically, duties such as "[a]ssisting with the updating of the 'B' Association website," "[p]reparing a variety of status reports regarding important issues voiced by current student athletes," and "[s]erving as liaison to [the petitioner's] international students," were characterized as "primary responsibilities" of the proffered position in support of the initial Form I-129 submission. Thereafter, the petitioner's associate athletic director characterizes these duties as incidental duties pertaining to the category "[o]ther duties as assigned."

Moreover, several of the duties enumerated by the petitioner in the initial January 12, 2010 affidavit, including "[c]ommunicating 'B' Association's goals, information, plans, and activities to coaching staffs," "following-up for collection of payment," and "distribution and pickup of shipping items" were eliminated from the descriptions of the proffered position that were provided in response to the RFE.

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 its associated job responsibilities. Here, the information provided in 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 provided a new list of generic duties that appears to materially change the "primary responsibilities" of the proffered position.

A petitioner may not make material changes to an H-1B submission 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). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *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 an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

<sup>3</sup> The AAO notes that in his January 12, 2010 affidavit, [REDACTED] provides a chart of the duties of the position with corresponding classes completed by the beneficiary during his academic program. However, the tasks differ from the list of duties provided by the employing department in response to the RFE. Furthermore, the duties are so generally described that the chart is not persuasive in establishing that a specific course of study is indeed required to perform the particular tasks. While related coursework may be helpful in the performance of various duties, the petitioner has not established that the proffered position requires a baccalaureate (or higher degree) in a specific specialty, or its equivalent.



### III. Specialty Occupation

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, and for the specific reasons described below, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

The AAO will first discuss the evidence in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. The petitioner stated that the beneficiary would be employed in an events coordinator position. However, 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 AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> As previously discussed, the petitioner designated the proffered position in the LCA under the occupational category "Meeting and Convention Planners."

The AAO reviewed the chapter of the *Handbook* entitled "Meeting, Convention, and Event Planners," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Meeting, Convention, and Event Planners" comprise 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 subchapter of the *Handbook* entitled "How to Become a Meeting, Convention, or Event Planner" states the following about this occupational category:

#### **Education**

Many employers prefer applicants who have a bachelor's degree and some work experience in hotels or planning. The proportion of planners with a bachelor's degree is increasing because work responsibilities are becoming more complex and because there are more college degree programs related to hospitality or tourism management. If an applicant's degree is not related to these fields, employers are likely to require at least 1 to 2 years of related experience.

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<sup>4</sup> All of the AAO's references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.



Meeting, convention, and event planners often come from a variety of academic disciplines. Some related undergraduate majors include marketing, public relations, communications, and business.

Planners who have studied hospitality management may start out with greater responsibilities than those from other academic disciplines. College students may also gain experience by planning meetings for a university club. In addition, some colleges offer continuing education courses in meeting and event planning.

### **Licenses, Certifications, and Registrations**

The Convention Industry Council offers the Certified Meeting Professional (CMP) credential, a voluntary certification for meeting and convention planners. Although the CMP is not required, it is widely recognized in the industry and may help in career advancement. To qualify, candidates must have a minimum of 36 months of meeting management experience, recent employment in a meeting management job, and proof of continuing education credits. Those who qualify must then pass an exam that covers topics such as adult learning, financial management, facilities and services, logistics, and meeting programs.

The Society of Government Meeting Professionals (SGMP) offers the Certified Government Meeting Professional (CGMP) designation for meeting planners who work for, or contract with, federal, state, or local government. This certification is not required to work as a government meeting planner; however, it may be helpful for those who want to show that they know government buying policies and travel regulations. To qualify, candidates must have worked as a meeting planner for at least 1 year and have been a member of SGMP for 6 months. To become a certified planner, members must take a 3-day course and pass an exam.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed., Meeting, Convention and Event Planners*, on the Internet at <http://www.bls.gov/ooh/business-and-financial/meeting-convention-and-event-planners.htm#tab-4> (last visited February 24, 2014).

When reviewing the *Handbook*, the AAO notes that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.<sup>5</sup> Thus, in designating the proffered position at a

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<sup>5</sup> The wage levels are defined in the U.S. Department of Labor's (DOL) "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or

Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant U.S. Department of Labor (DOL) explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Furthermore, DOL guidance indicates that a Level I designation may be appropriate for a research fellow, a working in training, or for an internship.

The passage of the *Handbook* regarding meeting, convention, and event planners states that "[m]any employers prefer applicants who have a bachelor's degree and some work experience in hotels or planning." A *preference* for a particular level of education does not indicate a *requirement* for the same. Further, the AAO notes that this section of the *Handbook* indicates that the "proportion of planners with a bachelor's degree is increasing," denoting that some employees in this occupation do not hold such a degree. In this context, the AAO considers the petitioner's designation of the proffered position as a Level I entry level position, which, as described above, is indicative of a low level position relative to others within the occupation.

The *Handbook* does not indicate that jobs in this occupational classification normally require a bachelor's degree in a specific specialty for entry into the occupation. Rather, this section of the *Handbook* states that meeting, convention, and event planners often come from a variety of academic disciplines. The *Handbook* indicates a general-purpose degree, such as a degree in business may be sufficient for these positions.<sup>6</sup> According to the *Handbook*, employers hire applicants with degrees in unrelated fields, although they sometimes require related experience. The *Handbook* states that college students may gain experience by planning meetings for a university club, and that some colleges offer continuing education courses in meeting and event planning. The *Handbook* does not conclude 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, according to the *Handbook*, there are several recognized certification credentials for meeting and convention planners. The *Handbook* provides basic information, including the general requirements for these credentials. There is no indication, however, that the petitioner requires the

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an internship are indicators that a Level I wage should be considered.

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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>6</sup> Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation.



beneficiary to have obtained any certification credential or other professional designation to serve in the proffered position. Nevertheless, the AAO reviewed the information, and notes that the *Handbook* does not indicate that certification credentials for meeting and convention planners have any specific degree requirements.<sup>7</sup>

In the appeal, counsel quotes the *Handbook* as stating that it "is not intended and should never be used for any legal purpose." Importantly, the AAO observes that the actual text of the *Handbook* continues by providing examples. In this regard, the examples that the pertinent paragraph provides of unintended uses are relevant and instructive. They are (1) using the *Handbook* as a guide for determining (a) wages, (b) hours of work, (c) the right of a particular union to represent workers, (d) appropriate bargaining units, or (e) formal job evaluation systems; and (2) using the *Handbook's* data to compute future loss of earnings in adjudication proceedings involving work injuries or accidental deaths. In light of the Bureau of Labor Statistics own endorsement of the *Handbook* as a reliable source of information on occupational categories and their entry requirements, and in light of the examples of unintended uses cited in the *Handbook's* "Important Note," the AAO finds that, if in fact it is counsel's intent to so argue, the argument against the use of the *Handbook* in USCIS adjudications is without merit. However, the AAO concurs with counsel to the extent that counsel may be asserting that it would be erroneous to accord to the *Handbook* the weight or directive power of statute, regulation, or any legally binding document or directive.

That said, the AAO also finds that counsel has not clearly articulated his concern with the director's reference to the *Handbook*. In this regard, given that the *Handbook's* information is published by the Bureau of Labor Statistics and on the basis of that Bureau's own research and analysis, the AAO finds no fault with the director's treatment of the *Handbook's* information as reliable. The AAO, however, also does not discern from the record that the director failed to either (a) fully and fairly consider and accord appropriate evidentiary weight to any countervailing evidence from any other source or (b) properly determine the ultimate impact of the *Handbook's* information upon the issues for which the *Handbook* was considered, including any evidence contrary to the *Handbook*.

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

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<sup>7</sup> More specifically, the *Handbook* states that the Convention Industry Council offers the Certified Meeting Professional (CMP) credential, which requires (1) three years of meeting management experience, (2) recent employment in a meeting management job, (3) proof of continuing education credits, and (4) passing an exam. In addition, the *Handbook* states that the Society of Government Meeting Professionals (SGMP) offers the Certified Government Meeting Professional (CGMP) designation. The *Handbook* indicates that this certification requires a candidate to (1) have at least one year of experience; (2) have been a member of SGMP for six months; and (3) take a 3-day course and pass an exam. The *Handbook* does not indicate that there are any particular degree requirements for certification in this occupation.



In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner 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 will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source) reports a standard, entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner provided a letter from [REDACTED] associate director for the petitioner's conference and event management department. [REDACTED] writes that she is a member of the Association for [REDACTED], and that she contacted the Association by phone to "research information about education standards in collegiate special events positions." [REDACTED] indicates that she "was given data via phone from the [REDACTED] Benchmarking Study" and reports the following information:

- 79 Colleges/Universities participated in this section of questions
- 91% percent of responding schools employed individuals with a Bachelor's degree or higher

The AAO reviewed [REDACTED] letter in its entirety. Notably, the letter does not provide any information regarding [REDACTED] (e.g., primary function, size of association, requirements for membership), and the petitioner did not supplement the record of proceeding with this information. There is no indication that the petitioner requires the beneficiary to be a member of [REDACTED] or to have obtained any certification credential or other professional designation to serve in the proffered

position. Thus, the petitioner has not established the probative value of [REDACTED] study to the issue here. Furthermore, although [REDACTED] references the study, she failed to provide the referenced report from [REDACTED] on the methods and results of the study or a citation to the report. Furthermore, the issue here is not whether some schools employ individuals with a bachelor's degree or higher, but rather this prong of the regulations requires the 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.

Here, for example, there is no indication that the study refers to a parallel position to the proffered position. The Association for Collegiate Conference and Event Directors-International appears to relate to "Conference and Event Directors" (based upon the name). [REDACTED] has not provided any evidence to the contrary. Notably, the proffered position is for a Level I event coordinator (as designated by the petitioner on the LCA). Thus, with this designation, the petitioner has indicated that the proffered position is a low, entry-level position relative to others within the occupation.

Moreover, [REDACTED] did not provide the job title(s), duties and day-to-day responsibilities of the position(s) referenced in the study. Furthermore, there is a lack of information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Without further information, [REDACTED] letter is not persuasive in supporting the petitioner's claims that the proffered position qualifies as a specialty occupation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In the RFE, the director requested that the petitioner provide evidence to demonstrate that the proffered position qualifies as a specialty occupation and provided examples of evidence to be submitted. Thereafter, for the first time on appeal, counsel submitted several job advertisements in support of this criterion of the regulations. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents with the initial petition or in response to the director's request for evidence. *Id.* The petitioner has not provided a valid reason for not previously submitting the evidence. Under the circumstances, the AAO need not consider the sufficiency of such evidence submitted for the first time on appeal. Nevertheless, the AAO reviewed the documentation but finds that it does not satisfy this criterion of the regulations.



In the Form I-129 petition, the petitioner describes itself as an enterprise, engaged in educational services, that was established in 1845. The petitioner states in the Form I-129 that it has 2,800+ employees, and reports that it is a non-profit organization. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 611310.<sup>8</sup> According to the U.S. Department of Commerce, Census Bureau website, the NAICS code 611310 is designated for "Colleges, Universities, and Professional Schools." The NAICS website describes this industry as follows:

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 611310 – Colleges, Universities, and Professional Schools, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited February 24, 2014).

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Here, the advertisements include positions with the following companies/organizations:

- [REDACTED] (owns and operates high end salon/spas and cosmetology institutes in the salon/spa industry);
- [REDACTED];
- [REDACTED];

<sup>8</sup> According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited February 24, 2014).



- [REDACTED] (entertainment venues and theaters); and
- Appreciation Events (works with human resources departments of companies, hospitals, government facilities, colleges, schools, and other organization to reward employees).

Without further information, the advertisements appear to be for organizations that are not similar to the petitioner, and the petitioner has not provided any probative evidence to suggest otherwise. The petitioner has not provided any information regarding which general characteristics, aspects or traits (if any) it believes it shares with the advertising organizations.

Furthermore, many of the advertisements do not appear to be for parallel positions.<sup>9</sup> For instance, it appears that some of the advertised positions may be more senior-level jobs than the proffered position. For instance, the petitioner provided a job posting for a position that requires a degree and five years of experience with a minimum of two years of experience in marketing, event planning, and executive administration. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of all of the advertised positions are parallel to the proffered position. Some of the advertising employers provided brief and/or vague job descriptions for the advertised positions, and do not contain sufficient information regarding the day-to-day duties, complexity of the job duties, supervisory duties (if any), independent judgment required, the amount of supervision received, and/or other relevant factors within the context of the advertising employers' business operations to make a legitimate comparison of the advertised positions to the proffered position.

Contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent is required for the positions. For example, the position with [REDACTED] indicates that a degree is preferred. Further, several of the job postings (including [REDACTED] s) state that a degree is needed, but they do not indicate that at least a bachelor's degree in a specific specialty (or its equivalent) is required. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the duties of the position. Although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

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<sup>9</sup> The petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of job advertised. Further, as they are only solicitations for hire, they are not evidence of what qualifications were ultimately required for the positions.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.<sup>10</sup>

Thus, based upon a complete review of the record of proceeding, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner.

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its mission and operations. The AAO reviewed the record of proceeding in its entirety. However, upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

More specifically, the petitioner has not demonstrated exactly what the beneficiary will do on a day-to-day basis. As such, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, the petitioner failed to sufficiently demonstrate how the duties 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. That is, the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a U.S. baccalaureate or higher degree program in a specific specialty, or its equivalent.

provided an affidavit, listing several courses completed by the beneficiary through his degree program as relevant to the tasks of the position. The AAO finds no basis to question the relevancy of these courses. However, while such courses as those listed may be beneficial in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses (1) leads to a baccalaureate or higher degree in a specific

<sup>10</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).



specialty, or its equivalent, and (2) is required to perform the duties of the proffered position. The petitioner has not established why a few courses, a short-term certificate program or industry experience (such as an internship), is insufficient preparation for the proffered position.

Further, the petitioner's description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the petitioner's claimed occupational classification "Meeting and Convention Planners" at a Level I (entry level) wage. The petitioner designated the position as a Level I position (the lowest of four assignable wage levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Further, DOL guidance states that a job offer for a research fellow, a worker in training, or an internship would be an indication that a Level I wage should be considered.

Without further evidence, it is not credible that the duties of the petitioner's proffered position are complex or unique relative to others within the asserted occupation, as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>11</sup> Thus, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed at least a U.S. baccalaureate program in a specific discipline (or its equivalent) that directly relates to the proffered position.

In response to the RFE, the petitioner submitted a letter from [REDACTED] professor in the [REDACTED] states that he has written numerous articles and book chapters in the field and taught in communications programs for 29 years. [REDACTED] indicates that after reviewing "(1) the job description for Coordinator, Special Events, (2) the affidavit comparing [the beneficiary's] skill set with the job description, and (3) the draft affidavit in response to the RFE," he concludes that "it is reasonable to specify communication skills as a requisite for the [proffered] position." [REDACTED] further states that "[the petitioner's] speech communication major should equip an individual with the needed communication skills to perform this job." While [REDACTED] indicates that "communication skills" are an appropriate requirement for the proffered position, it must be noted that he does not state that the petitioner's position requires at least a bachelor's degree in a specific specialty, or its equivalent. Contrary to the petitioner's assertion, the letter is not persuasive in establishing that the proffered position meets the requirements for a specialty occupation.

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<sup>11</sup> For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

While both [REDACTED] and the petitioner have indicated that the beneficiary's educational background will assist him in carrying out the duties of the proffered position, it must be noted that the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary. Rather, the test is whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge and attainment of at least a U.S. baccalaureate degree in a specific specialty, or its equivalent, for entry into the position. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Consequently, 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, the AAO typically reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but



whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner states in the Form I-129 petition that it has 2,800+ employees and that it was established in 1845. The petitioner did not provide the total number of people it has employed to serve in the proffered position. However, the associate athletic director states that there are currently three event coordinator positions employed at the petitioner's premises, located in the President's Office, Student Activities, and University Development.<sup>12</sup> The associate athletic director claims that these individuals possess bachelor's degrees but did not provide further information regarding their academic credentials, including the fields of study.<sup>13</sup> Notably, the associate athletic director does not state that the degree must be in a specific specialty directly related to the duties of the position. Thus, it appears that a general-purpose degree or a degree in any discipline is acceptable for these positions. The AAO here incorporates by reference its earlier discussion explaining that for a position to qualify as a specialty occupation, the minimum education required must be a bachelor's degree in a specific specialty, or its equivalent.

In response to the director's RFE, the petitioner's associate athletic director states that the petitioner is an institution of higher education and thus the individuals with whom the event coordinator will work typically have secondary or post-graduate degrees. This statement is not sufficient to satisfy the requirements for establishing that the proffered position qualifies as a specialty occupation. As previously noted, the position must actually require 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 (or its equivalent) as the minimum for entry into the occupation.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is

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<sup>12</sup> The petitioner provided job postings for these positions. The AAO reviewed the position descriptions provided by the petitioner, and notes that the duties of the other event coordinator positions have different job duties than those of the proffered position, and further, do not specify a requirement for a bachelor's degree in a specific specialty, or its equivalent.

<sup>13</sup> Moreover, the petitioner did not submit documentation in support of its statement (i.e., evidence of the individuals' academic credentials and employment with the petitioner).

usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The AAO acknowledges that the petitioner may believe that the nature of the specific duties of the position in the context of its business operations is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO finds that the petitioner's statements and the submitted documentation fail to support the assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Furthermore, the AAO also reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

#### **IV. Conclusion and Order**

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.