



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 12 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, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a "501(c)(3) religious organization [church]" established in 1963. In order to employ the beneficiary in what it designates as a "Pastor of Worship & Arts," the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous and that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of intent to deny (NOID); (5) the petitioner's response to the NOID; (6) the director's decision denying the petition; and (7) the Form I-290B and counsel's submissions on appeal.

I. EVIDENTIARY STANDARD

As a preliminary matter, and in light of counsel's references to the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), unless the law specifies that a different standard applies. In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director 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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*.

Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

II. PROCEDURAL AND FACTUAL BACKGROUND

As required, the petitioner submitted a certified Labor Condition Application (LCA) to support the visa petition. That document specifies the proffered position's job title as Pastor of Worship and Arts, the Standard Occupational Classification (SOC) code as "27-2041," and the associated occupational classification as "Music Directors and Composers." The LCA further states that the proffered position is a Level II position.

In a letter of support dated March 11, 2013, the petitioner asserts that it was originally established in 1963, and that its current vision is "to equip and empower a community of health balanced believers to influence and impact our surrounding communities, nation, and world." It further claims to have 265 official members and approximately 900 people attending its weekly services.

Regarding the proffered position of Pastor of Worship & Arts, the petitioner states that the duties of the beneficiary in this position would be as follows:

The proffered position is Pastor of Worship & Arts whose primary role as a worship leader will be to create a vision, plan and direction for the church's worship & arts ministry, whereby building a team of emerging worship leaders and church musicians, as well as cultivating an atmosphere of worship through spiritual teaching and coaching. The Pastor of Worship & Arts will also participate in the design of our religious services, message series, platform sets, planning of service schedule, special music, and theme songs. Furthermore, the position will involve directing and conducting instrumental and vocal performances and rehearsals, overseeing the sound and lighting technology, as well as recruiting, training and directing church volunteers for various areas of our Worship & Arts Ministry.

The petitioner further claims that the minimum educational requirements for the position are a Bachelor's degree in Ministry or Theology with two years of worship ministry experience, or in the alternative a Bachelor's degree in Music, with two years of ministry experience. The petitioner claimed that the beneficiary was qualified for the position based on his Bachelor of Arts degree in Ministerial Studies from [REDACTED] California.

Counsel also submitted the following documentary evidence in support of the petition: (1) a copy of the beneficiary's academic credentials, including his diploma and transcripts; (2) a letter from [REDACTED] Sr. Pastor of the [REDACTED] verifying that the beneficiary was a member of its worship ministry from February 2008 to June 2012; (3) a document entitled "Worship Leader Job Postings" which included various job vacancy announcements; and (4) promotional information relating to the petitioner.

The petitioner also submitted a more detailed overview of the proffered position, which identified the keys aspects of the proffered position, in relevant part, as follows:

1. Primary Worship Leader
2. Creative Team Member
3. Band Director
4. Choir Director
5. Audio Technology
6. Lighting Technology
7. Productions / Illustrated Sermons

Additionally, this document provided the following breakdown of duties:

Weekly: Oversee and manage the administration of Worship/Arts Ministry: band rehearsals, choir rehearsals, auditions, implement tools and technology (such as Planning Center) that will help advance Worship/Arts Department, Create Song Lists,

practice schedules, team rotations, etc. Attend all Tuesday Staff meetings. Attend scheduled creative meetings.

Monthly: Responsible for scheduling a worship leader for our 3rd Friday of the month prayer meeting. Schedule musician workshops, extended rehearsals, etc. Identify co-leader to fill in while you are doing outside ministry in order to sustain a standard of excellence.

Annual: Assist in the planning, creation and leading [the petitioner's] biggest services

On April 22, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation as well as additional evidence of the beneficiary's qualifications. The director specifically noted that the classification of the proffered position as that of a music director did not establish that the proffered position qualified as a specialty occupation since there did not appear to be a requirement for a baccalaureate or higher degree in a specific specialty for entry into the proffered position. The director outlined the specific evidence to be submitted.

Counsel and the petitioner provided a response to the director's request. In a letter dated July 9, 2013, the petitioner claimed that the proffered position of Worship Pastor was common among similar organizations and that some bible colleges and seminaries offered specific degree programs for this field. The petitioner submitted documentary evidence in support of its contentions, including (1) a letter from Dr. [REDACTED] President and CEO of [REDACTED] (2) copies of job vacancy announcements for positions that the petitioner contends are similar to the proffered position; (3) a letter from Pastor [REDACTED] California; (4) a letter from [REDACTED] Pastor of Worship and Creative Arts for [REDACTED] California; and (5) a copy of the petitioner's organizational chart.

The petitioner also submitted a list of the duties and job responsibilities of the Pastor of Worship & Arts position, which stated in relevant part as follows:

Recruit, equip, develop and supervise a team of emerging worship leaders and musicians through coaching, teaching from the Bible, preparing and leading devotional meetings, and praying with team	10%
Lead congregation in worship at weekly church services, including preaching scriptural encouragement and prayer	20%
Collaborate with Pastor on design of religious services and message series, to ensure continuity of music with message content, includes studying and teaching of Biblical themes	10%
Plan, direct and conduct instrumental and vocal performances at midweek rehearsals; includes instructing and training musicians	20%
Arrange music selection for weekly service, special music &	15%

theme songs	
Supervise the Sound & Lighting crew	5%
Schedule and lead rehearsals for musicians and singers	20%

The petitioner concluded by noting that the candidate for the proffered position must have knowledge and training as both Pastoral Leader and Music Director.

On July 26, 2013, the director issued a NOID. The director noted that the duties of the proffered position as described were vague, but additionally noted that the evidence of record failed to establish that the proffered position was truly that of a full-time music director that required a degree in music or a related field. The director further noted that, in the event the petitioner established that the proffered position were in fact that of a qualifying music director, the beneficiary's qualifications were at issue, since he possessed a degree in ministerial studies. The petitioner was afforded an opportunity to respond to the issues raised by the director.

In a response dated August 22, 2013, counsel for the petitioner provided the following documentary evidence:

1. Excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* pertaining to the occupational category of Music Director and Composers;
2. Excerpt from the O*Net Online's Summary Report pertaining to the occupational category of Music Director and Composers;
3. Relevant portion of the Foreign Labor Certification Data Center Online Wage Library pertaining to the prevailing wage for the proffered position of Music Director and Composer;
4. Expert Opinion letter from Dr. [REDACTED];
5. An updated, 3-page description of the duties of the proffered position, which included the amount of hours per week the beneficiary would devote to each required duty;
6. Copies of additional job vacancy announcements for positions that the petitioner contends are similar to the proffered position;
7. Copy of the Worship Leader Guide to Higher Education;
8. Letter from Executive Pastor of the petitioner, [REDACTED];
9. Letter from [REDACTED], Director of Worship Arts at [REDACTED] and [REDACTED];
10. Second Letter from [REDACTED] Executive Pastor of Worship and Creative Arts at [REDACTED] California.

The director denied the petition on June 14, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the supplemental

criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a Self-Enrichment Teacher position as described in the *Handbook*.

On appeal, counsel contends the denial was erroneous and submits additional evidence in support of this contention. Counsel specifically contends that the director's classification of the proffered position as a self-enrichment teacher was erroneous, noting that the updated, 3-page job description submitted in response to the NOID clearly outlined the nature of the proffered position.

III. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

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

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

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

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

IV. ANALYSIS

We will first address the proposed duties as described in this record of proceeding. As will be reflected in the discussion below, we find the evidence insufficient to establish the educational level of knowledge that would have to be practically and theoretically applied in order to perform the duties of the proffered position.

This is an appropriate juncture to note that, after reviewing the entire record of proceeding, we find the record fails to sufficiently articulate and demonstrate the particular work the beneficiary would actually perform on a day-to-day basis and the level of musical and/or theological knowledge that would be applied in the performance of those duties. That is, we have reviewed all of the statements and documentary submissions in support of the petition (including, but not limited to, the 3-page overview of the proffered position provided in response to the NOID), and are left without a satisfactory evidentiary foundation for apprehending even the general scope of the musical work that the beneficiary would actually perform, let alone the substantive nature of that work and any particular level of educational attainment that would be required to perform it in conjunction with the claimed ministerial duties. In particular, in light of what we find to be a consistently superficial and generalized level of supportive evidence, we are not persuaded that the beneficiary would be employed in a position that is substantially similar or parallel to any Music Director position, referenced anywhere within this record of proceeding, that would require at least a bachelor's degree in a specific specialty or its equivalent to perform its duties. That being said, we will now proceed to discuss the evidentiary record more directly.

The petitioner explains that it seeks to hire the beneficiary for the position of "Pastor of Worship & Arts," which it classifies under the occupational category of "Music Directors and Composers." However, we find that the record of proceeding lacks evidence documenting what those duties, or any other of the cited duties, would substantively entail in terms of the nature and level of theoretical and practical application of musical knowledge. This is particularly relevant since the description of duties indicates that, simultaneously, the beneficiary is expected to perform ministerial duties such as "[leading] a congregation of 1000+ in a meaningful spiritual experience through a clear exposition of Biblical truths," a task not typically considered part of the occupational requirements for a music director or composer.

Along those lines, it must be noted that the petitioner's claimed job-entry requirement of at least a bachelor's degree in "ministry, theology, or music," without more, is inadequate to establish that the proposed position qualifies as a specialty occupation. As we shall now discuss, absent additional evidence to the contrary, this aspect of the record undermines the petitioner's specialty occupation claim.

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" 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 theology and music, would not meet the statutory requirement that the degree be "in *the* specific specialty," 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," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in ministry, theology, or music. The issue here is that it is not readily apparent that these fields of study are closely related or that any one field or a combination of these fields is directly related to the duties and responsibilities of the particular position proffered in this matter such that the required knowledge of one field or a combined knowledge of these disparate fields is highly specialized and would equate to at least a bachelor's degree in the specialty, combined or otherwise.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, does not establish either (1) that the fields of ministry/theology and music are (a) closely related fields or (2) that at least a bachelor's degree level of highly-specialized knowledge in any one combination of these fields would be required to perform the position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards.

Also, absent evidence of a direct relationship between the acceptable academic majors and the particular attainments of specialized knowledge associated with them, on the one hand, and, on the other hand, the performance requirements reflected in the duties and responsibilities of the proffered position, it cannot be found that the proffered position requires at least a bachelor's degree or higher in any specific specialty or the equivalent.

Thus, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position which is the subject of this petition, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Moreover, as we shall now discuss, it also cannot be found that the proffered position is a specialty occupation because the evidence of record does not satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To reach this conclusion, we first turn 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 a position entitled "Pastor of Worship & Arts." 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.

We now address counsel's assertion that the director erred by classifying the proffered position as that of a self-enrichment teacher when adjudicating this matter. Upon review, we concur with counsel's assertions and withdraw the director's findings regarding the proffered position being a self-enrichment teacher. As will be described in greater detail below, however, the director's error is harmless as we find based on our *de novo* review that the director did not err in ultimately concluding the proffered position did not qualify as a specialty occupation. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). To that end, we will first address the petitioner's claim that the proffered position is best classified as a Music Director or Composer.

Both counsel and the petitioner assert that, despite the ministerial duties identified in the record, the proffered position is akin to that of a Music Director or Composer. The *Handbook* describes this occupational category as follows:

Music directors (also called conductors) lead orchestras and other musical groups during performances and recording sessions. Composers write and arrange original music in a variety of musical styles.

Duties

Music directors typically do the following:

- Select musical arrangements and compositions to be performed for live audiences or recordings
- Prepare for performances by reviewing and interpreting musical scores
- Direct rehearsals to prepare for performances and recordings

- Choose guest performers and soloists
- Audition new performers or assist section leaders with auditions
- Practice conducting to improve technique
- Meet with potential donors and attend fundraisers

Music directors lead orchestras and other musical groups. They ensure that the musicians play with one coherent sound, balancing the melody, timing, rhythm, and volume. They also give feedback to musicians and section leaders so that they can achieve the sound and style they want for the piece.

Music directors may work with a variety of orchestras and musical groups, including church choirs, youth orchestras, and high school or college bands, choirs, or orchestras. Some work with orchestras that accompany dance and opera companies.

Composers typically do the following:

- Write original music that orchestras, bands, and other musical groups perform
- Arrange existing music into new compositions
- Write lyrics for music or work with a lyricist
- Meet with companies, orchestras, or other musical groups that are interested in commissioning a piece of music
- Study and listen to music of various styles for inspiration
- Work with musicians to record their music

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2014-15 ed., "Music Directors and Composers," <http://www.bls.gov/ooh/entertainment-and-sports/music-directors-and-composers.htm#tab-2> (accessed September 10, 2014).

Assuming for the sake of argument the record sufficiently established the proffered position as that of a Music Director or Composer, we note that the *Handbook's* section pertaining to the educational requirements for music directors states:

A degree in music theory, music composition, or conducting is generally preferred for those who want to work as a conductor or classical composer. To enter these programs, applicants are typically required to submit recordings or audition in person or both.

These programs teach students about music history and styles, as well as composing and conducting techniques. Information on degree programs is available from the

A bachelor's degree is typically required for those who want to work as a choir director.

There are no specific educational requirements for those interested in writing popular music. These composers usually find employment by submitting recordings of their compositions to bands, singers, and music and movie studios. They may seek representation by an agent, who helps them find employment and performance opportunities.

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2014-15 ed., "Music Directors and Composers," <http://www.bls.gov/ooh/entertainment-and-sports/music-directors-and-composers.htm#tab-4> (accessed September 10, 2014).

Thus, the *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the pertinent occupational group. While the *Handbook* does state that a degree in music theory, music composition, or conducting is preferred for conductor or composer positions, this is not such a position. Nor is the degree required; it is merely a preference. The *Handbook* also indicates that choir director positions do not need at least a bachelor's degree in a specific specialty. Rather, the *Handbook* indicates a degree is typically required and, as such, this does not express a threshold requisite of a bachelor's degree in a specific specialty for entry into the "particular position" proffered here, even if it were claimed or found to be a choir director position. We therefore find insufficient support in the *Handbook* for the proposition that a baccalaureate degree in a specific specialty or its equivalent is normally the minimum entry requirement for this "particular position."

The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position for which this petition was filed. Consequently, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

Factors often considered by USCIS when determining the industry standard include: 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)).

The petitioner submits an abundance of documentary evidence, including letters from other churches in the area as well as various job postings for positions it claims are similar to the proffered position in this matter. We will address this evidence individually herein.

First, we note the submission of numerous letters from both [REDACTED] and local churches in the [REDACTED] California area. We will first address the two letters from [REDACTED]

As noted previously, the record contains a letter from Dr. [REDACTED] President and CEO of [REDACTED] dated May 29, 2013. Dr. [REDACTED] states in his letter that "we attest that a parallel position in many churches would normally require a bachelor's degree or equivalent as a minimum education requirement." Dr. [REDACTED] however, does not state that such positions require baccalaureate or higher degrees in a specific specialty or its equivalent. More importantly, he does not state that the proffered position in this matter requires a degree in a specific specialty and, therefore, this letter is accorded little evidentiary weight.

The record also contains a letter from [REDACTED] Director of Worship Arts for [REDACTED]. She, too, claims that the proffered position requires professional skill and knowledge "in multiple areas," noting that a combination of courses in multiple areas including music and theology would provide "a well-balanced education and skills to perform the duties of the worship pastor in the local church." Ms. [REDACTED] stops short, however, of stating that a bachelor's or higher degree in music or ministry is required to perform the duties of positions parallel to the proffered position. As such, this letter will also be afforded little evidentiary weight.

The petitioner also submits letters from pastors from local churches in [REDACTED]. The letters from [REDACTED] Executive Pastor of Worship and Creative Arts for [REDACTED], states that pastors must be "experts," and such expertise includes both ministry and music. However, the proffered position here is not that of a pastor, but instead has been classified by the petitioner on the LCA as that of a Music Director or Composer. While it is apparent that a combination of backgrounds will prepare those entering ministerial services to perform the required duties of such positions, the issue here is whether the proffered position in this matter requires a degree *in a specific specialty* as a minimum entry requirement. Although Pastor [REDACTED] letter claims that "a bachelor's degree in the field of music and/or theological [sic] are desired and more often required," her letters do not establish a standard practice of hiring only specialty degreed individuals for similar positions. Moreover, there is no claim or supporting evidence that her parish routinely hires specialty-degreed individuals for parallel positions.

Likewise, the letter from [REDACTED] Pastor of [REDACTED] does not establish a common specialty degree hiring requirement within the petitioner's industry. Specifically, Pastor [REDACTED] states that "we attest that a parallel position in a similarly sized congregation would normally require a bachelor's degree in Music or Theology." Again, this statement does not establish a standard practice of hiring only directly related specialty-degreed individuals, given that, absent evidence to the contrary, these two disparate fields are deemed by Pastor [REDACTED] to be equally acceptable for entry into this claimed occupational category. In addition, the statement only claims what the normal requirements are for a similar-sized organization. It does not claim or much less establish that [REDACTED] is such an organization or that it has such a requirement for a parallel position.

The record also contains a letter submitted for consideration as an expert opinion from Dr. [REDACTED]. Dr. [REDACTED] claims that, in her professional opinion, the proffered position of Worship & Arts Pastor with the petitioner requires at least a bachelor's degree in ministry or theology with two years of ministry experience or a bachelor's degree in music with two years of ministry experience. Again, we find these assertions inadequate to establish an industry standard, since, as previously noted, these two fields are disparate and such assertions on their own fail to establish the nexus between the course(s) of study pursued and the performance of the duties of the proffered position.

Moreover, Dr. [REDACTED] does not list the reference materials on which she relies as a basis for her conclusion. It appears that Dr. [REDACTED] did not base her opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Again, Dr. [REDACTED] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in either music or theology/ministry. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. The issue here is that it is not readily apparent based on the current record that these two fields of study are closely related.

The petitioner also submits a number of job vacancy advertisements in support of the contention that the degrees required here are common within similar organizations. However, we note again that the petitioner's classification of the proffered position, as set forth in the LCA, is that of a Music Director or Composer. Many of the submitted postings are for the position of "Director of Worship," "Pastor of Music," and "Worship & Music Leader." While many of these postings can be deemed akin to that of the proffered position, they state different entry requirements. For example, the position with [REDACTED] states simply that "some college and or theological education is preferred," whereas the position with [REDACTED] accepts "a graduate degree in relevant professional field." While some postings state a requirement for a degree in music, other postings require a theological degree, thereby again demonstrating that a degree in a specific specialty is not routinely required for entry into parallel positions within similar organizations. Again, several of the job advertisements did not specify a bachelor's degree requirement at all, and several did not specify a degree in a specific specialty. For these reasons, we will not further address the specific deficiencies of each advertisement herein.

Further, there is little inherent value to the collection of advertisements as they are not supplemented

by any evidence to establish how representative they are of the hiring and recruiting practices of either the firms that placed the advertisements or of firms similar to the petitioner in the petitioner's industry.

In summary, then, as the evidence in the record of proceeding has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions, the petitioner has not satisfied the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The record does not demonstrate any complex or unique nature of the proffered position that distinguishes it from similar but non-specialty degreed employment under the second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness relative to other positions within the same occupation as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

We note, on the LCA, the petitioner has designated the proffered position as a Level II position, indicating that it is a "qualified" position for an employee who has obtained a good understanding of the field but who will only perform moderately complex tasks. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with relatively 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).¹

¹ The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (last visited September 10, 2014)) issued by DOL states the following with regard to Level II wage rates:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Further, we observe that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out 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. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-specialty-degreed employment in the same occupation. Although the petitioner submitted a detailed overview of the position in response to the NOID, which emphasizes the stated music director duties, we observe that this response does not provide persuasive and substantive explanations or evidence establishing the relative complexity or uniqueness required to satisfy this criterion.

That being said, we hereby incorporate into this present discussion and analysis this decision's earlier comments and findings regarding the record's lack of substantive information about the proposed duties and the position that they comprise. Simply put, the evidence of record does not develop the proffered position sufficiently to show that it possesses the relative complexity or uniqueness required to satisfy this criterion.

Consequently, as the evidence in the record of proceeding fails to demonstrate the requisite complexity or uniqueness as aspects of the proffered position, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, we evaluate the record of proceeding to see whether the petitioner has established that it normally requires a degree or its equivalent for the position, pursuant to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

To satisfy the third criterion, the record must establish 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 or its equivalent as the minimum for entry into the occupation as required by

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level II, "qualified" position. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA with a Level II wage rate, the petitioner effectively attests that the beneficiary is only required to perform moderately-complex tasks that require limited judgment.

section 214(i)(1) of the Act. According to the court in *Defensor*, "To interpret the regulation any other way would lead to absurd results." *Id.* at 388. 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.*

As the record of proceeding contains no evidence regarding the petitioner's recruiting and hiring of any other music directors and composers, there is no evidence for consideration under this criterion. As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Here again we incorporate by reference our earlier comments and finding with regard to this record of proceeding's lack of substantive information as to the nature of the proposed duties. The evidence of record does not develop relative specialization and complexity as distinguishing aspects of the nature of the proffered position, let alone as aspects rendering the nature of the proposed duties so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

We note that the duties as described in the record of proceeding are broad and numerous and appear to span a variety of functions, including planning lessons, composing music for musical production, supervising the work of the music ministry volunteers, managing and overseeing the audio and lighting technology, and simultaneously providing ministerial services. However, to the limited extent to which they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty.

Accordingly, relative specialization and complexity have not been sufficiently developed by the petitioner as aspects of the duties of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of music director and composer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

V. BEYOND THE DECISION OF THE DIRECTOR

Although the director did not address the beneficiary's qualifications in the denial, we nevertheless must note that a degree in ministerial studies alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). However, the petitioner did not submit sufficient evidence regarding the proffered position for us to make an assessment of whether the beneficiary obtained knowledge equivalent to at least a bachelor's degree in a specific specialty required by the particular occupation in which he will be employed.

The petitioner emphasizes that the duties of the proffered position are those of a music director, and further indicates that the majority of his duties will focus on music – specifically, 27 hours of the beneficiary's 40 hour week, according to the 3-page job description submitted in response to the NOID, will be devoted to this "duty." With the implied emphasis of the beneficiary's duties falling into the category of "music," we are unable to draw a nexus between such a concentration and the beneficiary's educational background in ministerial studies. Therefore, the petitioner has not established that the beneficiary is qualified to perform services of a music director, in the event that such a position was found to qualify as a specialty occupation, and the petition could not be approved for this additional reason even if eligibility had otherwise been established.

VI. CONCLUSION

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.