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



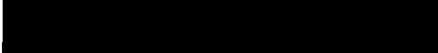
U.S. Citizenship  
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Services

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*Dr*

FILE: EAC 08 128 51179 Office: VERMONT SERVICE CENTER Date: **MAY 28 2010**

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a private household with 12 employees. It seeks to employ the beneficiary as a foreign language instructor 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the service center's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief and supporting documents. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue that the AAO will consider is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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, the position must also meet one of the following criteria:

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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. 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as a foreign language instructor. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s March 31, 2008 letter of support; and a letter from counsel for the petitioner in response to the RFE dated August 1, 2008. The support letter indicates the proffered position would require the beneficiary to perform the following duties with respect to the children of the household:

- Conducting classes;
- Providing individual instruction to teach French, Spanish, Italian and English;
- Develop techniques to improve student perception, memory, and language comprehension;
- Monitor performance to make suggestions for improvement and to satisfy learning objectives;
- Prepare materials to facilitate language learning (including homework and study guides);
- Design, administer and conduct tests and issue reports; and
- Develop lesson plans on culture, political and social history.

The support letter also states that the beneficiary will develop and conduct French, Spanish and Italian language classes for the parents of the household and English as a Second Language (ESL) classes for the staff of the household.

In the support letter, the petitioner writes the following:

[The petitioner] and his family frequently travel on their private plane to Mexico, the French-speaking islands of the Caribbean, Italy and France, and other destinations. As children of an affluent and influential family, they will be expected to meet and network with people from diverse cultural backgrounds. [The parents] thus feel it is critical for their children to be able to speak the languages of the countries they frequently visit. **The [petitioner's] children currently attend school in New Jersey**, however the level of foreign language instruction for their age group is minimal and is not providing them with solid foreign language fundamentals. As a result, the [petitioner wishes] to hire a part-time<sup>1</sup> language instructor **who will be dedicated to improving the foreign language skills of their children so that they are better equipped for foreign travel.** Additionally, [the parents] would like to improve their own foreign language skills. They have developed many business relationships across the globe and seek to attain a conversational knowledge of French, Spanish, and Italian to assist them in networking and in establishing new business relationships.

**Lastly, [the petitioner] employs a number of individuals who are not fluent in the English language. The Foreign Language Instructor is expected to commit a portion of her time to improving the English language ability of these employees, who include a driver, a housekeeper, and a chef.**

(Emphasis added.).

The petitioner also indicates that the position requires a minimum of a bachelor's degree (or equivalent experience) in language arts education or a related field and offers the beneficiary a salary of \$104,000 per year. The petitioner also submitted copies of the beneficiary's diplomas and certificates, which have been evaluated as equivalent to a bachelor's degree in language arts with a minor in international studies.

On July 7, 2008, the director issued an RFE, stating that the position does not appear to qualify as a specialty occupation, but instead is similar to a teacher for self-enrichment education under the definition provided by the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2008-09 Edition. The RFE requested documentation evidencing that the position is a specialty occupation as well as evidence regarding the beneficiary's current status.

In response to the RFE, counsel for the petitioner withdrew the request for extension, requesting consular notification instead, and argued that the proffered position is a specialty occupation as it is closest to the *Handbook's* definition of a secondary education teacher, rather than a self-enrichment teacher. To support this argument, counsel provided an expert opinion letter and job advertisements for foreign language instructors.

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<sup>1</sup> The petitioner also indicates in the support letter that a concurrent, part-time H-1B visa petition was being filed on the beneficiary's behalf. As all other documentation in this petition, including the forms, indicate that the petitioner intends for this position to be full-time, the AAO assumes that stating part-time in the position description is an inadvertent error.

The director denied the petition on September 11, 2008, finding that the proffered position is not a specialty occupation. On appeal, counsel submits four additional expert opinion letters in support of the petitioner's argument that the proffered position is a specialty occupation, most closely resembling a secondary school teacher position in the *Handbook*.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Turning to the criteria to establish the proffered position as a specialty occupation, the AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. With reference to self-enrichment teachers, the *Handbook* reports: "[t]eachers who conduct courses on academic subjects in a non-academic setting, such as literature, foreign language, and history courses, are also included in this occupation." Moreover, as the director noted in the RFE, the *Handbook* indicates that self-enrichment teachers "should have a knowledge and enthusiasm for their subject, but little formal training is required."

The petitioner never provided information about how many children will be taught by the beneficiary or their ages and grades. However, as referenced above in the petitioner's support letter, the children are already in school full-time. The *Handbook's* definition of "Teachers-Preschool, Kindergarten, Elementary, Middle, and Secondary" covers teachers in public and private schools, but does not appear to include the proffered position. The instruction to be provided by the beneficiary is not going to be part of the children's education at their school, but rather, will teach them foreign languages outside of school so that they can communicate better on family trips. In other words, the primary purpose of the foreign language instruction is self-enrichment.

The *Handbook's* description of "Teachers-Preschool, Kindergarten, Elementary, Middle, and Secondary" is as follows:

Teachers play an important role in fostering the intellectual and social development of children during their formative years. The education that teachers impart plays a key role in determining the future prospects of their students. **Whether in preschools or high schools or in private or public schools**, teachers provide the tools and the environment for their students to develop into responsible adults.

**Teachers act as facilitators or coaches**, using classroom presentations or individual instruction to help students learn and apply concepts in subjects such as science, mathematics, or English.

They plan, evaluate, and assign lessons; prepare, administer, and grade tests; listen to oral presentations; and maintain classroom discipline. Teachers observe and evaluate a student's performance and potential and increasingly are asked to use new assessment methods. For example, teachers may examine a portfolio of a student's artwork or writing in order to judge the student's overall progress. They then can provide additional assistance in areas in which a student needs help. Teachers also grade papers, prepare report cards, and meet with parents and school staff to discuss a student's academic progress or personal problems.

\* \* \*

Preschool, kindergarten, and elementary school teachers play a vital role in the development of children. What children learn and experience during their early years can shape their views of themselves and the world and can affect their later success or failure in school, work, and their personal lives. Preschool, kindergarten, and elementary school teachers introduce children to mathematics, language, science, and social studies. They use games, music, artwork, films, books, computers, and other tools to teach basic skills.

\* \* \*

Most elementary school teachers instruct one class of children in several subjects. In some schools, two or more teachers work as a team and are jointly responsible for a group of students in at least one subject. In other schools, a teacher may teach one special subject—usually music, art, reading, science, arithmetic, or physical education—to a number of classes. A small but growing number of teachers instruct multilevel classrooms, with students at several different learning levels.

Middle school teachers and secondary school teachers help students delve more deeply into subjects introduced in elementary school and expose them to more information about the world. Middle and secondary school teachers specialize in a specific subject, such as English, Spanish, mathematics, history, or biology. They also may teach subjects that are career oriented. Vocational education teachers, also referred to as career and technical or career-technology teachers, instruct and train students to work in a wide variety of fields, such as healthcare, business, auto repair, communications, and, increasingly, technology. They often teach courses that are in high demand by area employers, who may provide input into the curriculum and offer internships to students. Many vocational teachers play an active role in building and overseeing these partnerships. **Additional responsibilities of middle and secondary school teachers may include career guidance and job placement, as well as follow-ups with students after graduation.** (Special education teachers—who instruct elementary and secondary school students who have a variety of disabilities—are discussed separately in this section of the *Handbook*.)

**In addition to conducting classroom activities, teachers oversee study halls and homerooms, supervise extracurricular activities, and accompany students on field trips.** They may identify students with physical or mental problems and refer the students to the proper

authorities. **Secondary school teachers occasionally assist students in choosing courses, colleges, and careers. Teachers also participate in education conferences and workshops.**

**Computers play an integral role in the education teachers provide.** Resources such as educational software and the Internet expose students to a vast range of experiences and promote interactive learning. Through the Internet, students can communicate with other students anywhere in the world, allowing them to share experiences and differing viewpoints. Students also use the Internet for individual research projects and to gather information. **Computers are used in other classroom activities as well, from solving math problems to learning English as a second language.** Teachers also may use computers to record grades and perform other administrative and clerical duties. **They must continually update their skills so that they can instruct and use the latest technology in the classroom.**

(Emphasis added). From the *Handbook's* description of Teachers-Preschool, Kindergarten, Elementary, Middle, and Secondary, it is clear that this section refers to teachers of children in a school setting. According to this section, secondary school teachers do much more than teach a subject. They also oversee study halls and field trips, counsel children, integrate computers into the classroom setting, and continually receive additional training to update their skills.

Moreover, with respect to training and education for Teachers-Preschool, Kindergarten, Elementary, Middle, and Secondary, the *Handbook* states:

Traditional education programs for kindergarten and elementary school teachers include courses designed specifically for those preparing to teach. These courses include mathematics, physical science, social science, music, art, and literature, as well as prescribed professional education courses, such as philosophy of education, psychology of learning, and teaching methods. Aspiring secondary school teachers most often major in the subject they plan to teach **while also taking a program of study in teacher preparation.** Many 4-year colleges require students to wait until their sophomore year before applying for admission to teacher education programs. To maintain their accreditation, **teacher education programs are now required to include classes in the use of computers and other technologies. Most programs require students to perform a student-teaching internship.**

(Emphasis added). As mentioned above, the petitioner asserts that a minimum of a bachelor's degree in "language arts education" or a related field, or equivalent experience, is required for the proffered position. However, the beneficiary's education has been evaluated as equivalent to a bachelor's degree in language arts, not language arts education. Arguably, these are not related fields as a degree in language arts does not include the type of rigorous training in education that prepares someone to teach as does an education degree or teaching internship.

Moreover, as described by the petitioner, a primary part of the beneficiary's duties would be to instruct the household staff in English as a Second Language. The petitioner has not demonstrated how its degree requirement for the proffered position would be relevant for teaching English as a Second Language. Although the beneficiary has training in foreign languages, no evidence was provided to demonstrate that she has teaching experience, that she took courses in education or teacher preparation, that she had classes in computers or other technologies, or even that she is sufficiently fluent in English to teach it as a second

language. Additionally, the proffered position entails teaching adults as well as children, which is not part of a secondary education.

Therefore, the AAO concludes that: (1) the petitioner does not actually require a degree in language arts "education," or else the beneficiary would be unqualified for this position and thereby ineligible for H-1B status on this basis; (2) the proffered position does not entail the types of duties that reach the level of a specialty occupation; (3) the duties of the proffered position, which entail teaching foreign languages to adults and children as well as English as a second language, are too varied to require a degree in a specific specialty occupation, or even the same skill set; and (4) the proffered position does not fit under the *Handbook's* section on Teachers-Preschool, Kindergarten, Elementary, Middle, and Secondary.

It is also clear from the *Handbook's* description of Teachers-Preschool, Kindergarten, Elementary, Middle, and Secondary that teachers under this section typically teach in a school setting (whether public or private) and that classes taught by these teachers are part of the overall school curriculum for their grade level. The petitioner has not submitted evidence to demonstrate that the courses taught will count or otherwise provide credit at the children's school, that they will be considered a core part of their curriculum, or that there are any consequences to the children if they miss too many classes. The petitioner has not even stated what percentage of time the beneficiary would spend teaching the children (and how they would fit such instruction into their already full-time school schedule) and what percentage of time she would instruct the parents and teach English as a Second Language to the household staff. Instead, the petitioner states that the primary purpose of the language instruction for the children is so that they can speak better when the family travels to other countries – in other words, for self-improvement. Self-improvement is also the main reason for foreign language instruction of the parents as well as English as a second language for the household staff. The parents, household staff, and even the children, would take these classes on a voluntary basis. Therefore, the proffered position does not fit into the *Handbook's* section on Teachers-Preschool, Kindergarten, Elementary, Middle, and Secondary, as argued by the petitioner.

Instead, as the director found, the proffered position as described is most akin to the *Handbook's* description of "Teachers – Self-Enrichment." This description is as follows:

**Self-enrichment teachers provide instruction in a wide variety of subjects that students take for fun or self-improvement.** Some teach a series of classes that provide students with useful life skills, such as cooking, personal finance, and time management. Others provide group instruction intended solely for recreation, such as photography, pottery, and painting. Many others provide one-on-one instruction in a variety of subjects, including dance, singing, or playing a musical instrument. **Some teachers conduct courses on academic subjects, such as literature, foreign language, and history, in a non-academic setting.** **The classes self-enrichment teachers give seldom lead to a degree and attendance is voluntary,** but dedicated, talented students sometimes go on to careers in the arts.

Self-enrichment teachers may have styles and methods of instruction that differ greatly. **Most self-enrichment classes are relatively informal.** Some classes, such as pottery or sewing, may be largely hands-on, with the instructor demonstrating methods or techniques for the class, observing students as they attempt to do it themselves, and pointing out mistakes to students and offering suggestions to improve techniques. Other classes, such as those involving financial planning or religion and spirituality, may center on lectures or might rely more heavily on group

discussions. Self-enrichment teachers may also teach classes offered through religious institutions, such as marriage preparation or classes in religion for children.

Many of the classes that self-enrichment educators teach are shorter in duration than classes taken for academic credit; some finish in 1 or 2 days or several weeks. These brief classes tend to be introductory in nature and generally focus on only one topic—for example, a cooking class that teaches students how to make bread. Some self-enrichment classes introduce children and youth to activities, such as piano or drama, and may be designed to last anywhere from 1 week to several months.

**Many self-enrichment teachers provide one-on-one lessons to students. The instructor may only work with the student for an hour or two a week, but tells the student what to practice in the interim until the next lesson. Many instructors work with the same students on a weekly basis for years** and derive satisfaction from observing them mature and gain expertise. The most talented students may go on to paid careers as craft artists, painters, sculptors, dancers, singers, or musicians.

**All self-enrichment teachers must prepare lessons beforehand and stay current in their fields.** Many self-enrichment teachers are self employed and provide instruction as a business. As such, they must collect any fees or tuition and keep records of students whose accounts are prepaid or in arrears. Although not a requirement for most types of classes, teachers may use computers and other modern technologies in their instruction or to maintain business records.

(Emphasis added). The *Handbook's* description is therefore very close to the description of the proffered position.

Even though the *Handbook* states that “[f]ew self-enrichment education teachers are full-time salaried workers and that “[m]ost either work part time or are self-employed,” the *Handbook* also provides that others “have several part-time teaching assignments . . . .” The proffered position may be for a full-time job, but, subject-wise, it can actually be broken down into several different and distinct part-time teaching assignments as the beneficiary would: (1) teach the children foreign language either after school or on weekends; (2) teach the parents foreign language when they have free time; and (3) teach the staff English as a second language, presumably when they are not fulfilling their household responsibilities.

Just because the *Handbook* states that “pay is low” for teachers under this section, the fact that the petitioner is offering the beneficiary a high salary for this type of work in and of itself does not mean that the proffered position does not fit under this section. Instead, it is more important to compare the duties of the proffered position with the duties described in the *Handbook* for self-enrichment teachers, which are clearly more similar than the duties described in the section on secondary school teachers. Additionally, the *Handbook* describes self-enrichment teachers’ courses as follows: **“Many classes for adults are held in the evenings and on weekends to accommodate students who have a job or family responsibilities. Similarly, self-enrichment classes for children are usually held after school, on weekends, or during school vacations.”** (Emphasis added.) An evaluation of the duties and the environment in which these self-enrichment teachers instruct, plus the fact that the proposed instruction is for self-improvement and not academic credit, as well as

the fact that the proffered position entails teaching adults as well as children, means that the proffered position is closest to the *Handbook's* description on self-enrichment teachers.

In response to the RFE, the petitioner submitted an opinion letter from Professor [REDACTED] Professor of Education at [REDACTED]. The AAO acknowledges Professor [REDACTED] opinion regarding the position of a foreign language instructor. Professor [REDACTED] indicates that he is qualified to comment on the educational requirements of the proffered position because of his experience. However, Professor [REDACTED] does not adequately explain or otherwise support why his opinion of this occupation is contrary to the *Handbook's* report on self-enrichment teachers. He simply concludes that, "In my review of the position offer by the [petitioner], I found that **substantial** formal training would be required of the instructor in order to achieve the desired educational outcomes. Facilitating the children's, parents [sic], and staff's ability to achieve communicative competency would take more than knowledge and enthusiasm, it would take the minimum educational threshold of a bachelor's degree or equivalent."

Under the *Handbook's* description of self-enrichment teachers, "In general, there are few educational or training requirements for a job as a self-enrichment teacher beyond being an expert in the subject taught. To demonstrate expertise, however, self enrichment teachers may be required to have formal training in disciplines, such as art or music, where specific teacher training programs are available." In other words, a bachelor's degree in a specific specialty is not required, but the self-enrichment teacher must still have a level of expertise in the subject taught. Professor [REDACTED] does not adequately explain in detail how the proffered position requires a bachelor's degree rather than mere expertise in foreign languages. Moreover, Professor [REDACTED] mention of "desired educational outcomes" does not make sense given the petitioner's statement that the primary purpose of the foreign language instruction is so the children can communicate better during family trips abroad.

Additionally, Professor [REDACTED] states that "For the [petitioner's] children, a program consisting of a few hours of foreign language 'self-enrichment' is not enough. They will need a well-developed model of instruction that includes language and content simultaneously, delivered by someone who has an undergraduate degree." It is not clear on what evidence Professor [REDACTED] bases his conclusions. The petitioner has not demonstrated that the children will be instructed by the beneficiary more than a few hours per week, which seems likely given that the children are already attending school full-time. No calendar was provided by the petitioner that demonstrated the typical week of each child, including what hours the child attends school and what other classes or activities outside of school the child takes, giving an indication of what time would be devoted by each child to foreign language instruction. No letter or transcript from the children's school was provided with respect to what foreign language classes, if any, are or were already taught to the children. Moreover, the petitioner has not demonstrated that the purpose of the instruction is for a reason other than self enrichment, such as academic credit.

Professor [REDACTED] also argues that the duties of the proffered position require an advanced level of skill because:

"teaching adults requires additional expertise, particularly if the adults are required to learn a higher level of communicative competency . . . . Furthermore, the position requirements detailed by the [petitioner] included the ability to deliver **multiple** language instruction . . . . For example,

the expertise needed to teach fluency in the dialectical nuances between English, Spanish, French, and Italian is much more complex than that of someone who is just teaching one language after school to similarly situated middle school students.”

This argument is not persuasive as it does not distinguish the proffered position from a self-enrichment teacher as described in the *Handbook*. **Unlike secondary school teachers**, self-enrichment teachers teach adults as well as children. Indeed, the *Handbook*'s description states, “Many classes for adults are held in the evenings and on weekends to accommodate students who have a job or family responsibilities. Similarly, self-enrichment classes for children are usually held after school, on weekends, or during school vacations.” The *Handbook* does not say that self-enrichment teachers are incapable of teaching more than one type of group, or even one subject; indeed, the *Handbook* states that a level of expertise is required to become a self-enrichment teacher and that some have several part-time assignments. However, because a bachelor's degree in a specific specialty is not required for self-enrichment teachers, the level of expertise required to be a self-enrichment teacher is not sufficient to perform the duties of a specialty occupation.

For the first time on appeal, counsel for the petitioner submits four additional expert opinion letters. Like the letter from Professor [REDACTED], all of these opinions are based on the assumption that because the proffered position entails teaching adults foreign languages as well as children, and because it also entails teaching English as a Second Language, the duties of the proffered position are sufficiently complex and advanced to require a bachelor's degree or equivalent in a specific specialty. However, just because the proffered position entails teaching more than one language to one group, does not mean that the duties are sufficiently complex to establish this position as a specialty occupation. Again, these letters do not distinguish the proffered position from a self-enrichment teacher, who, from the *Handbook*'s description, may teach a variety of subjects to adults as well as children and must have a level of expertise in the subject taught (albeit not at a level sufficient to establish the proffered position as a specialty occupation). **Most importantly, these letters have not shown how the primary purpose of the teaching is for anything other than self-enrichment.**

Moreover, it is precisely because the duties of teaching foreign languages to children and adults as well as teaching English as a second language to adults, all of which would take place outside of normal school/work hours in a non-academic setting, are so varied that: (1) the position is closer to the description of a self-enrichment teacher than a secondary school teacher; and (2) the position does not require a degree or equivalent in a specific specialty.

Additionally, the AAO observes that the *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. The record does not contain evidence that any of the opinion writers interviewed the beneficiary, interviewed the petitioner, or otherwise investigated the actual duties required of the proffered position. Indeed, the opinion writers seem to have based their opinions solely on undisclosed documents prepared by the petitioner and/or counsel. The record does not contain evidence that the opinion writers interviewed or visited other homes where teachers provide private foreign language instruction. The opinion writers do not base their opinions on objective surveys and independent detailed evidence of an industry standard. There is thus an inadequate factual foundation established to support any of these opinions. The opinion letters submitted by the petitioner both in support

of the RFE and on appeal are therefore insufficient to overcome the *Handbook's* finding that the occupation of a self-enrichment teacher is an occupation that does not require a bachelor's degree in a specific discipline. Where an opinion is in any way questionable, the AAO may discount it or give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not established that the duties of the proffered position satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that 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 already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Additionally, for the reasons discussed above, the opinion writers of the letters submitted by the petitioner in response to the RFE and on appeal do not demonstrate that the writers have adequate knowledge of the facts presented. Without any reference to objective evidence in their letters, the writers must be presumed to have based their opinions on a generic written description of job duties and business operations as provided to them by counsel for the petitioner (in fact, the letter from [REDACTED], a Certified Rehabilitation Counselor, specifically states that his knowledge of the position comes from reviewing documentation provided by counsel for the petitioner). The writers do not demonstrate knowledge based on objective evidence, nor do they relate any personal observations of the operations in the petitioner's household or of the work that the beneficiary would actually perform. Their opinions do not relate their conclusions to specific, concrete aspects of this petitioner's household to demonstrate a sound factual basis for their conclusions about the educational requirements for the particular position at issue. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. Again, however, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791. As the opinions of the writers are not based on an adequate factual foundation, the AAO does not find them probative.

Additionally, the record's job-vacancy advertisements are not evidence of a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. In response to the RFE, the petitioner submitted seven job advertisements, none of which are for private households. Moreover, most of these do not require a degree in a particular specialty and they are for positions that teach either a foreign language or English as a Second Language, but not both. None of these advertisements seem to entail teaching foreign languages to children. Furthermore, the range of the degree requirements cited in the job advertisements are not inconsistent with the

*Handbook's* finding that a bachelor's degree in a specific specialty is not normally a requirement for self-enrichment teaching positions.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." In the instant petition, the record does not demonstrate that the proffered position's complexity or unique nature distinguishes it from similar but non-degreed employment under the second prong of the criterion. The described duties are those of a self-enrichment teacher, duties that are not associated with a bachelor's degree in a specific discipline. The petitioner has not identified any specific duties that elevate the position to one that would require the education obtained through a four-year university program. The AAO acknowledges the opinion letters submitted by the petitioner on this issue, but again finds these opinions lack the factual foundation and analysis necessary to be probative in this matter. The petitioner has not established that a baccalaureate or higher degree or its equivalent is common to the industry in parallel positions among similar organizations or, in the alternative, is so complex or unique that it can be performed only by an individual with a degree in a specific discipline. The petitioner has failed to establish the alternative prongs of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. This appears to be a newly created position, and the petitioner has not indicated that anyone else has held this position previously in the household. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner does not submit a description of any specialized or complex responsibilities that would distinguish the proffered position from that of a self-enrichment teacher, employment the *Handbook* indicates does not impose a degree requirement. The record does not contain evidence of any specific duties that elevate the proffered position to one that requires a bachelor's degree in a specific discipline. The petitioner has not substantiated that the beneficiary's expertise could only have been obtained through the attainment of a baccalaureate or higher degree or its equivalent in a specific discipline. To the contrary, the evidence of record demonstrates that an individual with knowledge of French, Spanish, Italian and English could perform the duties of the position.

In one of the opinion letters submitted on appeal, Professor ██████████ states, "The knowledge required to provide foreign language instruction cannot simply be acquired automatically by being a native speaker. One must have at least good tertiary education to acquire it. This means that to be a qualified language instructor, a bachelor's degree is the minimum requirement." Again, this does not distinguish the proffered position from that of a self-enrichment teacher nor does the letter prove that a bachelor's degree in a specific specialty is required. Foreign languages can be taught by self-enrichment teachers. As described in the *Handbook*: "Some teachers conduct courses on academic subjects, such as literature, **foreign language**, and history, in a non-academic setting." Moreover, as stated in the *Handbook*, "**All self-enrichment teachers must prepare lessons beforehand and stay current in their fields.**" Self-enrichment teachers must be skilled and they

must be able to plan for lessons. However, unlike secondary school teachers, they teach in an informal setting for self-enrichment purposes. None of the opinion letters submitted have adequately explained how the proffered position is different from a self-enrichment teacher.

Without evidence demonstrating that the duties of the position contain elements that are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, the petitioner has not established 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 the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO finds that even if the petitioner were to demonstrate that the proffered position is a specialty occupation as claimed, the petitioner has not established that the beneficiary meets the petitioner's own requirement that the person who fills this position have at least a bachelor's degree (or equivalent experience) in language arts *education*. As indicated previously, the beneficiary's credentials have been evaluated as equivalent to a bachelor's degree in language arts with a minor in international studies. Her credentials have not been evaluated as equivalent to a bachelor's degree in language arts *education*. As such, the petition could not be approved even if the petitioner had demonstrated, which it did not do, that the proffered position is a specialty occupation.

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

The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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