

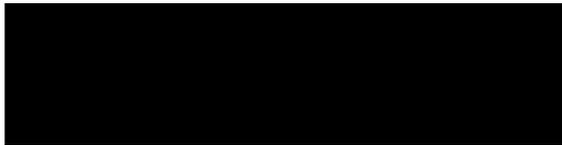
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D2



Date: **DEC 16 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 \$630. 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, California 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 remain denied.

The petitioner is a law office providing legal services in the areas of employment and civil rights law, civil and business litigation, family law, and business related immigration law. It was established in 1987, employs six personnel, and had earned a gross annual income of \$644,119 when the petition was filed. It seeks to employ the beneficiary as a law clerk 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, Petition for a Nonimmigrant Worker, and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the director's RFE; (4) the director's denial letter; and (5) Form I-290B, Notice of Appeal or Motion, with counsel's brief, additional evidence, and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue in this matter 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 [1] 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 [2] 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 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 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, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as a law clerk. The October 20, 2009 letter submitted in support of the petition stated:

The beneficiary is expected to, under the ultimate supervision of a licensed attorney, and the daily supervision of a senior paralegal, provide assistance in preparing written reports and legal arguments used in determining how cases should be handled, draft contracts and other legal documents, and conduct legal research on Chinese law for matters having an international connection.

The petitioner stated that the specific job duties included:

- Assist attorney in investigation and gathering the relevant facts of each case, collecting data, validating information contained in purportedly authentic documents, and ensuring that all relevant information is considered;
- Perform new case intake interviews and client contact for follow ups through interview and telephone calls;
- Organize and analyze pertinent information, and prepare legal memoranda to be reviewed and used by attorneys;
- Identify the statutes, regulations, administrative, and judicial decisions, legal articles, and other materials that are relevant to assigned cases;
- Under supervision, draft contracts and other legal documents for clients dealing with Chinese business partners;
- Under supervision, conduct legal research in the area of Chinese law, and international investment and trade law including investment issues and options, imports and exports, and joint ventures;
- Assist attorney in non-litigation legal activities with international connections, such as corporate formation, registration and dissolution, and corporate due diligence in China.

The petitioner noted that it looked “for an individual with a minimum of a master’s degree in law, or a combination of education in legal studies from an accredited law school in the United States or its foreign equivalent” and that “only individuals with advanced degrees in legal studies have the necessary competence and in-depth knowledge to carry out these duties.” The petitioner also provided a printout from the Department of Labor’s *Occupational Information Network O\*NET Online (O\*NET)* on the occupation of law clerk.

The director issued an RFE requesting additional documentation including evidence that the beneficiary had registered as a foreign legal consultant as required by the California Rules of Court.

In a November 13, 2009 response to the RFE, the petitioner reiterated that the title of the proffered position is “law clerk” not “foreign legal consultant” and that the beneficiary had no responsibility and qualification to provide legal advice pertaining to Chinese laws as a foreign legal consultant but that the beneficiary would only perform the duties of a law clerk in the proffered position. The petitioner clarified the duties of the proffered position in an attempt to emphasize that the beneficiary would be performing the duties of a law clerk. The petitioner referenced the *O\*NET* printout on a law clerk occupation and asserted that the beneficiary’s duties corresponded to the duties outlined on the printout and noted that *O\*NET* recognized that a law clerk position normally required a four-year degree or higher.

The petitioner also provided copies of four advertisements including for: (1) a law clerk that required a master's degree in law; (2) a research law clerk which indicated the ideal candidate would have a bachelor's degree in law or LLM and other skills; (3) a law clerk indicating the applicant must possess a bachelor's degree and have experience in immigration and/or criminal law; and (4) a technical legal writer which required a bachelor's degree in law or an LLM. The petitioner noted that as the beneficiary would be expected to research and analyze highly complex Chinese and U.S. trade and investment laws, regulations, and administrative decision in order to draft various types of legal memoranda for review by the petitioner's attorneys, the position is sufficiently complex that it can only be performed by someone with a bachelor's degree or higher.

The director denied the petition, finding that the proffered position is not an H-1B specialty occupation.

On appeal, the petitioner asserts that the specific duties of the proffered position require research and analysis of specialized and complex Chinese laws and international laws and only individuals with advanced degrees in legal studies have the necessary competence and in-depth knowledge to carry out these duties. The petitioner also notes that it previously employed an individual in the position of law clerk who had specialized knowledge and a law degree in international laws and Chinese laws. The petitioner attached an H-1B approval notice for this individual, an evaluation of this individual's foreign educational credentials, and an affidavit from its operational manager attesting that the petitioner had employed this individual. The petitioner again referenced the *O\*NET's* information on law clerks and contended that the Department of Labor relies on the *O\*NET* as the official and authoritative source for the issuance of labor certificates. The petitioner takes issue with the director's characterization of the proffered position as a paralegal as described in the Department of Labor's *Occupational Outlook Handbook's (Handbook)*. The petitioner noted that the *Handbook* does not include research as a major job duty of a paralegal. The petitioner also references the job advertisements previously submitted and avers that the job duties listed in the advertisements are parallel to the proffered position and that a bachelor's degree is similarly necessary for the proffered position.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first 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 Department of Labor's *Occupational Outlook Handbook (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)).

Contrary to the petitioner's claim, the duties of the proffered position most closely resemble the duties of a paralegal as set out in the *Handbook*. See Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos251.htm> (last accessed December 2011). The chapter on paralegals in the *Handbook* states in pertinent part:

Although lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to paralegals. In fact, *paralegals*—also called *legal assistants*—are continuing to assume new responsibilities in legal offices and perform many of the same tasks as lawyers. Nevertheless, they are explicitly prohibited from carrying out duties considered to be within the scope of practice of law, such as setting legal fees, giving legal advice, and presenting cases in court.

One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. Paralegals might investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. If attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

In addition to this preparatory work, paralegals perform a number of other functions. For example, they help draft contracts, mortgages, and separation agreements. They also may assist in preparing tax returns, establishing trust funds, and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records.

Computer software packages and the Internet are used to search legal literature stored in computer databases and on CD-ROM. In litigation involving many supporting documents, paralegals usually use computer databases to retrieve, organize, and index various materials. Imaging software allows paralegals to scan documents directly into a database, while billing programs help them to track hours billed to clients. Computer software packages also are used to perform tax computations and explore the consequences of various tax strategies for clients.

Paralegals are found in all types of organizations, but most are employed by law firms, corporate legal departments, and various government offices. In these organizations, they can work in many different areas of the law, including litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, labor law, bankruptcy, immigration, family law, and real estate. As the law becomes more complex, paralegals become more specialized.

Within specialties, functions are often broken down further. For example, paralegals specializing in labor law may concentrate exclusively on employee benefits. In small and medium-size law firms, duties are often more general.

The tasks of paralegals differ widely according to the type of organization for which they work. *Corporate paralegals* often assist attorneys with employee contracts, shareholder agreements, stock-option plans, and employee benefit plans. They also may help prepare and file annual financial reports, maintain corporate minutes' record resolutions, and prepare forms to secure loans for the corporation. Corporate paralegals often monitor and review government regulations to ensure that the corporation is aware of new requirements and is operating within the law. Increasingly, experienced corporate paralegals or paralegal managers are assuming additional supervisory responsibilities, such as overseeing team projects.

The duties of paralegals who work in the public sector usually vary by agency. In general, *litigation paralegals* analyze legal material for internal use, maintain reference files, conduct research for attorneys, and collect and analyze evidence for agency hearings. They may prepare informative or explanatory material on laws, agency regulations, and agency policy for general use by the agency and the public. Paralegals employed in community legal-service projects help the poor, the aged, and others who are in need of legal assistance. They file forms, conduct research, prepare documents, and, when authorized by law, may represent clients at administrative hearings.

The similarities of the proffered position to that of the duties of a paralegal are found in several areas. For example, the individual in the proffered position assists the attorney in investigation and gathering the relevant facts of each case, collecting data, validating information contained in purportedly authentic documents, and ensuring that all relevant information is considered. She also will organize and analyze pertinent information, and prepare legal memoranda to be reviewed and used by attorneys. The petitioner notes that the beneficiary will, under supervision, draft contracts and other legal documents for clients dealing with Chinese business partners. This is similar to the *Handbook's* discussion of paralegals helping lawyers prepare for closings, hearings, trials, and corporate meetings and investigating the facts of cases and ensuring that all relevant information is considered as well as identifying appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. Moreover the *Handbook* reports that after the paralegal analyzes and organizes the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled and may help draft contracts, mortgages, and separation agreements.

Contrary to counsel's claim, the *Handbook* does include the duties to conduct research and to assist the attorney in corporate formation, registration and dissolution, and corporate due diligence. The *Handbook* indicates paralegals search legal literature stored in computer databases, they conduct legal research to assist in litigation, and they identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. It appears in this matter that counsel's primary focus is to hire an individual familiar with Chinese

law and business matters not that the actual duties of the proffered position require any more analytical or practical research knowledge than that of a qualified paralegal, an occupation that does not require a baccalaureate degree or higher in a specific specialty. The petitioner's reliance on the beneficiary's qualifications does not elevate the proffered position to a specialty occupation.

Regarding the education and training requirements to become a paralegal the Handbook states in pertinent part:

There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate degree. Another common method of entry, mainly for those who already have a college degree, is earning a certificate in paralegal studies. A small number of schools offer bachelor's and master's degrees in paralegal studies. Finally, some employers train paralegals on the job.

Associate's and bachelor's degree programs usually combine paralegal training with courses in other academic subjects. Certificate programs vary significantly, with some taking only a few months to complete. Most certificate programs provide intensive paralegal training for individuals who already hold college degrees.

Thus, the normal minimum requirement for entry into the particular position is not a baccalaureate degree or higher in a specific discipline.

The petitioner's cite to the *O\*NET* to establish that the proffered position is a specialty occupation is not probative. First, the AAO notes that the *O\*Net* Summary Report for 23-2092.00 – Law Clerks as an occupational code is no longer used by the Department of Labor. See [www.onetonline.org/link/summary/23-2011.00](http://www.onetonline.org/link/summary/23-2011.00). The former law clerk occupational code has been replaced with 23-1012.00 (Judicial Law Clerks) or 23-2011.00 (Paralegals and Legal Assistants). The proffered position does not fall within the purview of a Judicial Law Clerk occupation but as observed above does fall within the occupational designation of a paralegal or a legal assistant. The *O\*NET* finds that a paralegal or legal assistant occupation requires medium preparation and identifies the occupation as a Job Zone Three which is a designation indicating that most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Second, even if using the *O\*NET*'s previous identification of the occupational category of law clerk and the accompanying Job Zone Four designation, such a designation does not demonstrate that a bachelor's degree in any specific specialty is required, and therefore does not demonstrate a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See the *O\*Net* Online Help Center, at [www.online.onetcenter.org/help/online/zones](http://www.online.onetcenter.org/help/online/zones), for a discussion of Job Zone 4, which explains that this Zone signifies only that most<sup>1</sup> but not all of the occupations

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<sup>1</sup> The first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of law clerk positions require at least a bachelor's degree in law or a related field, it could be said

within it require a bachelor's degree. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite counsel's assertions to the contrary, the *O\*Net* information is not probative of the proffered position qualifying as a specialty occupation.

Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102). 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. Although the petitioner submitted advertisements for various positions with similar titles to the title of law clerk, the advertisements provide only an overview of the duties of the advertised positions. The job postings do not include sufficient information to establish that the actual position is parallel to the proffered position. Upon review of the job postings and the information included in the *Handbook* regarding industry norms, the petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that there are a number of avenues available to become a paralegal or legal assistant, many that do not include the requirement that the individual possess a bachelor's or higher degree in a specific discipline. The record does not include sufficient evidence that the proposed duties as described exceed the scope of a typical paralegal and the general research and writing necessary to assist attorneys in their practice of the law.

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that "most" law clerk positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

On appeal, the petitioner notes that it previously employed an individual in the position of law clerk who had specialized knowledge and a law degree in international and Chinese laws. The AAO has reviewed the H-1B approval notice for this individual, an evaluation of this individual's foreign educational credentials, and the affidavit from the petitioner's operational manager attesting that the petitioner had employed this individual. USCIS, however, does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See § 291 of the Act, 8 U.S.C. § 1361. Moreover, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petition was approved based on the same general description of duties and other information as in the current record, it would have constituted material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

In addition, the petitioner's opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). The petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. In response to the director's RFE, the petitioner stated the beneficiary would be expected to research and to analyze highly complex Chinese and U.S. trade and investment laws, regulations, and administrative decisions in order to draft various types of legal memoranda for review by the petitioner's attorneys. On appeal, the petitioner reiterated that the proffered position requires research and analysis of specialized and complex Chinese laws

and international laws and asserts only individuals with advanced degrees in legal studies have the necessary competence and in-depth knowledge to carry out these duties. The petitioner, however, does not identify specifically what research would elevate the proffered position to a specialty occupation. The petitioner does not set out what particular international or Chinese laws require the additional knowledge associated with a baccalaureate or higher degree in the legal field. The *Handbook* outlines the myriad number of ways a paralegal may assist attorneys including conducting online research, identifying laws, judicial decisions, legal articles and other materials that are relevant to the assignment and writing reports for the use of attorneys. The petitioner's addition of the words "specialized and complex" when describing the type of laws the beneficiary will research and analyze is insufficient to reflect that the proffered position actually requires a higher degree of knowledge and skill than would normally be required of a paralegal who is also required to perform research and provide a written report of the research performed. It is incumbent upon the petitioner to document how the duties and performance requirements of its particular proffered position elevate it above other positions in the same occupational group that neither require nor are usually associated with at least a U.S. bachelor's degree in a specific specialty or its equivalent. Again, the petitioner's desire to hire someone who has the beneficiary's qualifications is not sufficient to elevate the duties of the proffered position to a position that is specialized and complex and thus requires a theoretical and practical application of a body of highly specialized knowledge attained only with the completion of a bachelor's or higher degree in a specific specialty. Upon review of the totality of the record of proceedings, the petitioner has not established the proffered position as a specialty occupation under the requirements 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.

The appeal will be dismissed and the petition denied for the above stated reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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