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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**

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Date: **DEC 28 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:



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

The petitioner claims to be a Jewish worship and learning center with two employees. It seeks to employ the beneficiary as a Hebrew teacher and to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 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 [(2)] 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, 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 382, 387 (5th Cir. 2000) (hereinafter *Defensor*). 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 Hebrew teacher. In the petitioner’s support letter dated June 11, 2009, the petitioner states that the beneficiary will be responsible for “preparing course objectives and outline for course of study, following curriculum guidelines[,] and preparing, administering and correcting tests and record results. In addition, [the beneficiary] will assign lessons, correct papers, and [sic] hear oral presentations

and evaluate student performance[,] and discuss pupil academic and [sic] behavioral attitudes and achievements.”

The petitioner’s support letter further states that the proffered position requires a bachelor’s degree in Hebrew language or its equivalent. The petitioner submitted copies of the beneficiary’s foreign degree and transcripts, along with a credential evaluation finding that the beneficiary’s foreign education is equivalent to a U.S. bachelor’s degree in theater and Hebrew language.

On August 11, 2009, the director issued an RFE requesting the petitioner to submit, inter alia, (1) a more detailed job description, including specific job duties, percentage of time spent on each duty, level of responsibility, hours per week of work and the minimum education, training and experience necessary; (2) evidence to establish a degree requirement is common to the industry in parallel positions among similar organizations such as job listings or advertisements; and (3) copies of the petitioner’s present and past job vacancy announcements..

On September 22, 2009, in response to the director’s RFE, the petitioner submitted, in part, (1) the same job description from the petitioner’s support letter dated June 11, 2009; (2) one job vacancy announcement; (3) a copy the excerpt regarding Teachers - Preschool, Kindergarten, Elementary, Middle, and Secondary; and (4) a copy of the Occupational Information Network (hereinafter *O\*NET*) for Foreign Language and Literature Teachers, Postsecondary.

The director denied the petition on October 27, 2009.

On appeal, counsel for the petitioner submits 17 additional job vacancy announcements. Counsel claims the proffered position requires a bachelor’s degree and cites *Matter of Delis*, 11 I&N Dec. 860 (Reg. Comm’r 1968), *Guinto v. INS*, 303 F. Supp. 1094 (C.D. Cal. 1969), and *Matter of Gowani*, 13 I&N Dec. 8 (Reg. Comm’r 1968). In addition, counsel claims the AAO recognizes a teacher that incorporates a foreign language into the curriculum requires a bachelor’s degree in education or a related field. Counsel cites *Matter of [name not provided]*, Case No. LIN 01 190 50089 (AAO Sept. 12, 2002). Counsel further states that the director erroneously classified the proffered position as a self-enrichment teacher 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 U.S. Department of Labor’s (DOL’s) *Occupational Outlook Handbook* (hereinafter 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)).

As a preliminary matter, the AAO will address *Matter of Delis, Guinto v. INS*, and *Matter of Gowani* cited by counsel.<sup>1</sup> The facts in these decisions are not analogous to the instant petition. Specifically, the matters cited pertain to immigrant visa petitions and whether the beneficiaries are members of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and 8 C.F.R. § 204.5(k)(2). As indicated earlier, the issue before the AAO is whether the petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession. Thus, the matters cited by counsel are irrelevant to the instant petition.<sup>2</sup>

With regard to *Matter of [name not provided]*, Case No. LIN 01 190 50089 cited by counsel, the facts in this decision are also not analogous to the instant petition. For instance, in *Matter of [name not provided]*, the petitioner is a private, bilingual elementary school with 88 employees and an approximate gross annual income of \$4 million. In addition, a key difference in that matter was the proffered position's teacher licensing requirement, which was akin to that required of secondary public school teachers. Regardless, even if the facts of that case were analogous to those in this matter, it is an unpublished decision and, as such, is not binding on the AAO. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO will now look at the *Handbook*, an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> The *Handbook's* description of "Teachers-Kindergarten, Elementary, Middle, and Secondary" states as follows:

Teachers play an important role in fostering the intellectual and social development of children during their formative years. The education that students acquire is key to determining the future of those students. **Whether**

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<sup>1</sup> With regard to *Guinto v. INS*, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court even in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

<sup>2</sup> The AAO notes that the primary, fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree, or its equivalent, to be in a specific specialty. Thus, while "teachers in elementary or secondary schools" are specifically identified as qualifying as a profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

**in elementary 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, and 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. They are increasingly 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 the 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.

\* \* \*

*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. 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. Additional responsibilities of middle and secondary school teachers may include career guidance and job placement, as well as following up with students after graduation.

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 who have 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....

See Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, 2010-11 Ed., "Teachers-Kindergarten, Elementary, Middle, and Secondary," <http://www.bls.gov/oco/ocos318.htm> (accessed Dec. 15, 2011).

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

The traditional route to becoming a public school teacher involves completing a bachelor's degree from a teacher education program and then obtaining a license. However, most States now offer alternative routes to licensure for those who have a college degree in other fields. Private school teachers do not have to be licensed but may still need a bachelor's degree.

*Education and training.* Traditional education programs for kindergarten and elementary school teachers include courses designed specifically for those preparing to teach. Among these courses are 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. Teacher education programs are accredited by the National Council for Accreditation of Teacher Education and the Teacher Education Accreditation Council. Graduation from an accredited program is not necessary to become a teacher, but it may make fulfilling licensure requirements easier.

Many States now offer professional development schools, which are partnerships between universities and elementary or secondary schools. Professional development schools merge theory with practice and allow the student to experience a year of teaching firsthand, under professional guidance. Students enter these 1-year programs after the completion of their bachelor's degree....

*Id.* From the *Handbook's* description of Teachers-Kindergarten, Elementary, Middle, and Secondary, it is clear that teachers 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 in this matter claims to be a private school. However, according to the California Department of Education, a private school is a private business or nonprofit entity that offers or conducts full-time instruction with a full complement of subjects at the elementary, middle, or high school level. See California Department of Education, <http://www.cde.ca.gov/sp/ps/rq/psfaq.asp> (accessed Dec. 15, 2011). The petitioner has not submitted evidence to demonstrate that it has a full complement of subjects at the elementary, middle, or high school level. In addition, the petitioner has not submitted evidence to demonstrate that the courses taught will count or otherwise provide credit at the children's full-time 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. Instead, the petitioner submitted the curriculum for the Hebrew language course, which is broken down in two month increments. Therefore, the proffered position does not fall within the *Handbook's* description of Teachers-Kindergarten, Elementary, Middle, and Secondary, as argued by the petitioner.

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

*Self-enrichment teachers* provide instruction on a wide variety of subjects that students take for fun or self-improvement. Some teach 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 singing, or playing a musical instrument. **Some teachers conduct courses on academic subjects, such as literature, foreign languages, and history, in a nonacademic setting. The classes taught by self-enrichment teachers seldom lead to a degree and attendance is voluntary.** At the same time, **these courses can provide students with useful skills, such as knowledge of computers or foreign languages,** which make them more attractive to employers.

Among self-enrichment teachers, their styles and methods of instruction can 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 for improving their techniques. Other classes, such as those involving financial planning or religion and spirituality, might center on lectures or 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 they may be designed to last from 1 week to several months.

Many self-enrichment teachers provide one-on-one lessons to students. The instructor might only work with the student for 1 or 2 hours per week and then provide the student with instructions on 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.

**All self-enrichment teachers must prepare lessons beforehand and stay current in their fields. The amount of time required for preparation can vary greatly, depending on the subject being taught and the length of the course.** Many self-enrichment teachers are self employed and provide instruction as part of a personal business. As such, they must collect any fees or tuition and keep records of their students' accounts. Although not a requirement for most self-enrichment classes, teachers often use computers and other modern technologies in their instruction or to maintain their business records.

See *Handbook*, 2010-11 Ed., "Teacher-Self-Enrichment Education," <http://www.bls.gov/oco/ocos064.htm> (accessed Dec. 15, 2011) (emphasis added).

Under the *Handbook's* "Training, Other Qualifications, and Advancement" section of self-enrichment teachers, it states:

The main qualification for self-enrichment teachers is expertise in their subject area, but requirements vary greatly with the type of class taught and the place of employment.

*Education and training.* 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. Prospective dance teachers, for example, may complete programs that prepare them to teach many types of dance—from ballroom to ballet. Other employers may require a portfolio of a teacher's work. For example, to secure a job teaching a photography course, an applicant often needs to show examples of previous work. Some self-enrichment teachers are trained educators or other professionals who teach enrichment classes in their spare time. **In many self-**

**enrichment fields, however, instructors are simply experienced in the field, and want to share that experience with others.**

*Id.* (Emphasis added). Therefore, 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. Because the *Handbook* indicates that entry into the self-enrichment teacher occupation does not normally require at least a bachelor's degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO will now discuss the *O\*NET* Summary Report for 25-1124.00 – Foreign Language and Literature Teachers, Postsecondary submitted by counsel in response to the RFE. First, the *O\*NET* Summary Report is irrelevant to this matter as it is for postsecondary teacher positions. Second, even if it was relevant, the AAO notes that it is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in Hebrew language or its equivalent. A designation of Job Zone 5 indicates that a position requires extensive preparation. It does not, however, demonstrate that at least a bachelor's degree in any specific specialty or its equivalent is required, and does not, therefore, demonstrate that 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 <http://www.onetonline.org/help/online/zones> (confirming that Job Zone 5 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.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied 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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals

employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of 18 advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the educational services industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent was required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, one of the advertisements is for a position in a different industry and dissimilar organization and, thus, it cannot be found to be a parallel position. Moreover, while some of the advertisements are for positions in the educational services industry, they appear to be for community colleges and, therefore, they also cannot be found to be parallel positions in similar organizations. As a result, the petitioner has not established that similar companies in the same industry commonly require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.<sup>4</sup>

For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also 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 any complexity or unique nature of the

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<sup>4</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just 18 job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar educational services industries. *See generally* [REDACTED] 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of Hebrew teacher for a two-person educational services facility required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

proffered position that distinguishes it from similar but non-degreed or non-specialty 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. Thus, 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, that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific discipline. The petitioner has therefore failed to establish the alternative prongs of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>5</sup>

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 Hebrew could perform the duties of the position.

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

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<sup>5</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the 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").

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, although the job title on the LCA submitted with the petition reads "Hebrew Language Teacher" and the occupation code 099 or "Occupations in Education," it was certified for a Level I prevailing wage level of \$38,780 per year for foreign language and literature teachers, postsecondary, which is not included in occupation code 099. The job as titled and as described by the petitioner, however, is a self-enrichment education teacher, which is classified under occupation code 099 or "Occupations in Education." Thus, the petitioner was required to provide at the time of filing an LCA certified for self-enrichment education teachers for Level II prevailing wage level of \$32,240 per year in order for it to be found to correspond to the petition.

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification and wage, and the petition must be denied for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed 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. § 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.