

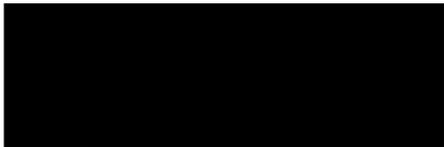
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

DATE: **JUN 01 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 director 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 tennis academy that seeks to employ the beneficiary as a public relations specialist. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director's findings were erroneous and submits a brief and additional evidence in support of this contention.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. 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, a 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 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 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 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as 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.

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

The petitioner stated on the Form I-129 that it is a tennis academy that has 17 employees and gross annual income of \$1.8 million. In a letter of support dated September 11, 2009, counsel for the petitioner stated that the petitioner "is the most prestigious year-round boarding academy for sectional, national and international junior tennis players on the West Coast." Counsel further explained that the petitioner "only accepts 60-70 of the finest students from across the United States and countries around the world," and claimed that it required the services of a public relations specialist skilled in market research and analysis, promotions, recruitment and advertisement in order to maintain its selectivity.

Regarding the beneficiary, counsel indicated that the title of the proffered position was "Public Relations Specialist for Northern Africa," and that the duties of the proffered position were as follows:

[The beneficiary] will be responsible for researching and analyzing the North African junior tennis demographic and charting each U.S. junior tennis school's share of this demographic. [The beneficiary] will research enrollment of North African junior tennis players at U.S. schools and contrast his findings with number of [the petitioner's] applicants. He will conduct comprehensive studies of the impact of key competitors' current and past promotional campaigns on their North African student enrollment. Based on his analysis of these studies, [the beneficiary] will create effective promotional campaigns utilizing various media tools, including but not limited to: written materials, on-line content material, and video products. He will contract with designers to aid in the development of these media tools. [The beneficiary] will also organize international, promotional events. He will meet with management to discuss research findings, the implementation of innovative strategies, and new promotional campaigns. He will prepare detailed reports of his findings for management.

Counsel further stated that, at a minimum, the candidate for the proffered position must possess at least a bachelor's degree in mass communication, public relations, marketing or advertising or an equivalent combination of education and experience. Regarding the beneficiary, counsel

indicated that he possessed a U.S. bachelor's degree in mass communication and journalism with a public relations option.

The director determined that the petitioner had submitted insufficient evidence to establish eligibility, and consequently issued an RFE on September 22, 2009. Specifically, the director requested additional documentation demonstrating that the proffered position was in fact a specialty occupation in accordance with the four criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A). Noting that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* did not specifically require at least a bachelor's degree in a specific specialty for entry into the proffered position, the director requested additional documentation, including but not limited to:

- a clear explanation of what differentiates the proffered position such that the specific tasks require the expertise of someone with a bachelor's degree in a specific field;
- evidence showing that the petitioner and similarly situated businesses in the same industry require individuals with a bachelor's degree in a specific field of study to fill the position;
- an explanation of how many other individuals have been employed in similar positions in the past and documentary evidence to establish those employees were employed by the petitioner and have a bachelor's degree in the specific field of study; and
- the petitioner's present and past job announcements for the proffered position and evidence of any other forms of recruitment utilized by the company for the proffered position showing that the petitioner requires its applicants to have at least a bachelor's degree in a specific specialty or its equivalent.

In a response dated October 30, 2009, counsel for the petitioner addressed the director's RFE and identified the supporting documentation included with the response. Counsel submitted a copy of the petitioner's organizational chart, copies of the petitioner's federal tax returns for 2006 and 2007 and its quarterly wage reports for the past four quarters, and promotional material for the petitioner's business. Additionally, counsel submitted job postings for positions claimed to be akin to that of the proffered position in the petitioner's industry and an opinion letter from [REDACTED], Associate Professor of Journalism at the University of North Carolina at Chapel Hill's School of Journalism and Mass Communication. Finally, counsel submitted a more detailed description of the duties of the proffered position, which stated as follows:

[The petitioner] wishes to expand its share of the junior tennis demographic in Northern Africa and is seeking an individual to coordinate this undertaking. The Public Relations Specialist's duties are listed as follows with their corresponding percentages of total work time:

- Research [the petitioner's] competitors; analyze their prices, student enrollment, key demographics and marketing campaigns (20%);
- Research and provide information to pinpoint [the petitioner's] position among its competitors with regards to North African student enrollment (5%);
- Measure the effectiveness of [the petitioner's] previous and current marketing strategies on student enrollment (10%);
- Create questionnaires to measure and assess student satisfaction (5%);
- Follow trends in tennis literature for marketing use (5%);
- Research North African student preferences and needs to identify factors which would affect future enrollment (10%);
- Create a new marketing campaign for Northern Africa utilizing various media tools, including but not limited to: written materials, on-line content material, and video products (20%);
- Contract with media designers to aid in the development of new media tools (5%);
- Respond to requests for information generated by new marketing campaigns (2%);
- Research, identify, and analyze prospective players (2%);
- Recruit players directly and indirectly through contacts, marketing campaigns and promotional trips (2%);
- Create and further develop contacts in various media fields, including: publishing, television, internet and radio (2%);
- Organize international, promotional events (5%);
- Create film, slide, or other visual presentations for promotional events and coordinate all necessary advertising to ensure the success of each event (2%); and
- Discuss research findings, new promotional campaigns, and the implementation of findings and recommend strategies with the Marketing Director and Academy Director, this will include preparation of charts, graphs, and diagrams to succinctly convey all findings (5%).

The director denied the petition on November 10, 2009, concluding that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner contends that performance of the duties of the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and refers to the evaluation by [REDACTED] in support of this contention.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the AAO finds that the proffered position is not a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, United States Citizenship and Immigration Services (USCIS) looks beyond the title of the position. It

determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

In order to ascertain whether the duties of the proposed position support the petitioner's characterization of the position as a public relations specialist, the AAO turns to the 2010-2011 edition of the *Handbook* for its discussion of that field. With regard to the duties of public relations specialists, the *Handbook* states, in pertinent part, the following:

An organization's reputation, profitability, and its continued existence can depend on the degree to which its targeted public supports its goals and policies. Public relations specialists—also referred to as *communications specialists* and *media specialists*, among other titles—serve as advocates for clients seeking to build and maintain positive relationships with the public. Their clients include businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public. As managers recognize the link between good public relations and the success of their organizations, they increasingly rely on public relations specialists for advice on the strategy and policy of their communications.

Public relations specialists handle organizational functions, such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; and employee and investor relations. Public relations specialists must understand the attitudes and concerns of community, consumer, employee, and public interest groups to establish and maintain cooperative relationships between them and representatives from print and broadcast journalism.

Public relations specialists draft press releases and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists. Sometimes, the subject of a press release is an organization and its policies toward employees or its role in the community. For example, a press release might describe a public issue, such as health, energy, or the environment, and what an organization does to advance that issue.

Public relations specialists also arrange and conduct programs to maintain contact between organization representatives and the public. For example, public relations specialists set up speaking engagements and prepare speeches for officials. These media specialists represent employers at community projects; make film, slide, and other visual presentations for meetings and school assemblies; and plan conventions.

* * *

People who handle publicity for an individual or who direct public relations for a small organization may deal with all aspects of the job. These public relations specialists contact people, plan and research, and prepare materials for distribution. They also may handle advertising or sales promotion work to support marketing efforts.¹

The AAO finds the above discussion to be generally reflective of the petitioner's description of the duties of the proposed position. As such, the AAO turns to the *Handbook's* description of the credentials required to gain entry into the field:

A bachelor's degree in a communications-related field combined with public relations experience is excellent preparation for a person interested in public relations work.

Education and training. Many entry-level public relations specialists have a college degree in public relations, journalism, marketing, or communications. Some firms seek college graduates who have worked in electronic or print journalism. Other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business—information technology, healthcare, science, engineering, sales, or finance, for example.

Many colleges and universities offer bachelor's and postsecondary programs leading to a degree in public relations, usually in a journalism or communications department. In addition, many other colleges offer courses in this field. Courses in advertising, business administration, finance, political science, psychology, sociology, and creative writing also are helpful. Specialties may be offered in public relations for business, government, and nonprofit organizations.²

The *Handbook's* discussion does not establish that a baccalaureate degree in a specific field, or its equivalent, is the normal minimum entry requirement for this field. Although the *Handbook* states that many entry-level public relations specialists have a college degree in public relations, journalism, marketing or communication, there are no defined standards for entry into this field. This statement does not equate to a finding that a baccalaureate degree in a specific field, or its equivalent, is the normal minimum entry requirement. Nor does the *Handbook's* statement, i.e., a college degree in a communications-related field combined with work experience is excellent preparation for work in the field, equate to a finding that a baccalaureate degree in a specific field, or its equivalent, is a normal minimum entry requirement. That a certain career preparation

¹ Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-2011 ed., available at <http://www.bls.gov/oco/ocos086.htm> (last accessed May 24, 2011).

² *Id.*

provides “excellent preparation” is not synonymous with the “minimum requirement for entry” criterion imposed by the regulation. Nor does the *Handbook*’s statement that “many entry-level public relations specialists have a college degree” equate to a finding that a baccalaureate degree in a specific field, or its equivalent, is the normal minimum entry requirement, as that statement does not meet the “minimum requirement for entry” criterion imposed by the regulation.

For these reasons, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The AAO now turns to a consideration of whether the petitioner, unable to establish the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may establish one of the three remaining additional criteria: a degree requirement as the norm within the petitioner’s industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong 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.

To meet the burden of proof under the first prong imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations. 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 noted previously, the *Handbook* does not report that the industry normally requires a bachelor’s degree as a minimum qualification. Nor has the petitioner submitted evidence that the industry’s professional associations have made a degree a minimum requirement for entry.

On appeal, counsel asserts that the director should have considered the opinion prepared by [REDACTED] under this criterion. Specifically, counsel contends that [REDACTED] has been involved in the public relations industry since 1986, and formerly held a position as assistant director of public relations for Belmont College in Nashville. Counsel concludes that as a result of her extensive resume and current position as director of the Ph.D. program at the School of Journalism and Mass Communication at the University of North Carolina at Chapel Hill, [REDACTED]

██████████ opinion should be accepted as evidence that firms in the industry routinely employ and recruit only degreed individuals.

Upon review, the AAO disagrees with counsel's assertions. ██████████ opinion letter states that "it is standard for companies such as [the petitioner] to hire a Public Relations Specialist and require that individual to have attained at least a Bachelor's Degree." She continues by claiming that various exclusive academic institutions regularly hire public relations specialists, and concludes that this is the industry standard.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this matter, there is no evidence submitted to support ██████████ finding that "exclusive academic institutions," and therefore tennis academies such as the petitioner, routinely hire degreed individuals for the position of public relations specialist. ██████████ provides no statistical evidence or other documentation to support her conclusions and fails to explain how her conclusions were reached. Even if she did, the fact that ██████████ incorrectly states the proper legal standard to be applied, i.e., by failing to state that the required baccalaureate or higher degree or its equivalent be in a *specific specialty*, renders ██████████ opinion that the proffered position qualifies as a specialty occupation meaningless. Consequently, the AAO affords no weight to this opinion.

Additionally, the petitioner submitted six job vacancy announcements in response to the RFE in support of the contention that the degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed these announcements and finds them unpersuasive.

The petitioner is a tennis academy with seventeen employees and a gross annual income of \$1.8 million. It has not submitted any evidence to demonstrate that any of these job postings are from companies "similar" to the petitioner. Specifically, the advertisers include ██████████ one of the largest toy companies in the world, ██████████ a home for abused, abandoned and neglected children, three public schools, and a university. There is no evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Moreover, as they are limited to sparse, generalized, and generic information about the nature of the duties of their positions, these advertisements do not provide a factual basis for a meaningful comparison with the duties proposed for the beneficiary. Also, there is no evidence in the record as to how representative these advertisements are of the advertisers' usual recruiting and hiring practices. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel submits additional job vacancy announcements not previously submitted in support of the contention that the degree requirement is common to the industry in parallel

positions among similar organizations. The AAO, however, will not consider these announcements. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's RFE. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

For all of these reasons, the petitioner has failed to establish that a degree requirement is an industry standard, and therefore has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The *Handbook* reveals that the duties of the proposed position are similar to those of a public relations specialist as outlined in the *Handbook*; and the *Handbook* does not indicate that a baccalaureate degree in a specific field, or its equivalent, is a normal minimum entry requirement. The duties proposed by the petitioner are no more complex or unique than those outlined by the *Handbook*; rather the duties proposed by the petitioner largely mirror those outlined in the *Handbook*. The duties discussed by the petitioner appear no more unique, complex, or specialized than those discussed in the *Handbook* which, as discussed previously, neither require nor are associated with at least a baccalaureate degree in a specific specialty. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

The petitioner, therefore, has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Additionally, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires at least a baccalaureate degree in a specific specialty or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. Although documentation specific to this criterion was requested by the director, the petitioner failed to provide such evidence.

While the petitioner contends that it requires its public relations specialist to possess at least a bachelor's degree in mass communication, public relations, marketing or advertising, the petitioner failed to present evidence in support of this contention. Nor did the petitioner present any supporting documentation of its past employment practices, as requested by the director. In the instant case, the petitioner has submitted no evidence regarding its past hiring practices with regard to other similarly situated employees. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

While the petitioner states that a degree is required, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations in any other way would lead to absurd results: if USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed 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 the specialty. As previously discussed, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not a normal minimum entry requirement. The petitioner has failed to differentiate the duties of the proposed position from those described in the *Handbook* in any meaningful way and, as such, has failed to indicate the specialization and complexity required by this criterion.

Although the petitioner contends that the beneficiary's knowledge of the North African region and its junior tennis demographic constitutes specialized knowledge, which it may, the fact that the beneficiary grew up in Northern Africa and is familiar with the region does not elevate the proffered position to one that requires a bachelor's degree in a specific field of study. The evidence of record does not distinguish the duties of the proposed position as more specialized and complex than those of public relations specialist positions not requiring or usually associated with at least a bachelor's degree in a specific field.

Finally, the AAO notes that counsel cites to an unpublished decision in which the AAO found that the occupation of public relations specialist qualified as a specialty occupation under this criterion. Counsel, however, has furnished no evidence to establish that the facts of the instant

petition are analogous to those in the unpublished decision. 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.

Consequently, the record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish any of the additional, supplemental criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the petitioner has not established that the proffered position qualifies as a specialty occupation, and the AAO will not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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