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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: Office: VERMONT SERVICE CENTER

FILE:

IN RE: **FEB 07 2012**  
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 nonimmigrant visa petition was denied by the service center director, and appeal was taken to the Administrative Appeals Office (AAO) on appeal. The AAO dismissed the appeal as moot, then reopened the matter *sua sponte*. The matter is again before the AAO on appeal. The appeal will be dismissed.

On the Form I-129 visa petition the petitioner stated that it is a Jewish preschool of traditional pedagogical instruction. To employ the beneficiary in what it designates as a Head Guide/Teacher for Primary Level position, the petitioner endeavors 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

As will be discussed below, the AAO has determined that the director's determination to deny the petition on the specialty occupation issue was correct. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means 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 a particular position 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.

With the visa petition, counsel submitted a letter, dated March 31, 2009, from the petitioner's executive director. It describes the duties of the proffered position as follows:

- Teach, care for, and manage a [REDACTED] with 24 children;
- Prepare curriculum based on [REDACTED];
- Prepare children in the academic areas of Language and Basic Math, as well as the healthy development of social, emotional, and physical functioning;
- Ensure creative development and diligent care of the [REDACTED] Environment and Materials;
- Responsible for keeping record of each child's progress and
- Responsible for establishing clear lines of communication with the parents.

The petitioner's executive director cited the Department of Labor's *O\*Net Online* service for the proposition that kindergarten teacher positions require a bachelor's degree, which suggests that the proffered position is a kindergarten teacher position. She also stated that the proffered position requires, "a Bachelor's Degree or foreign academic equivalent in Teaching, Communications, Math, Language or a related field of study." The AAO observes that a requirement of a degree in that wide array of subjects is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty. By asserting that a degree in any of those subjects would suffice, the petitioner's executive director suggested by implication that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

On May 2, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted copies of vacancy announcements printed from web content; and another letter, dated June 10, 2009, from the petitioner's executive director. The AAO notes that the petitioner subsequently submitted other vacancy announcements. The AAO will describe all of the vacancy announcements together.

Two of the vacancy announcements were placed by the [REDACTED] [REDACTED] or a kindergarten teacher. They state that the position requires a four-year degree in elementary education. Because those announcements are for the same position for the same employer, they will be counted only once.

Another vacancy announcement was placed by the [REDACTED]. It states that a requirement of the position is "Certified or BA in ECE (early childhood education)." Whether a teaching certificate in Georgia necessarily requires a minimum of a bachelor's degree or the equivalent in a specific specialty is unknown to the AAO.

Another announcement was placed by [REDACTED], for teachers at various grade levels, including kindergarten. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement was placed by [REDACTED] for a [REDACTED] to work in Oberlin, Ohio. It states that the position requires a minimum of an associate's degree in early childhood education. The AAO observes that a requirement of an associates degree is not a requirement of a minimum of a bachelor's degree.

Another vacancy announcement was placed by [REDACTED] of Mechanicsville, Pennsylvania, for an elementary teacher. It states that the position requires a four-year degree, but not that the degree must be in any specific specialty.

Another announcement is for a kindergarten teacher to work for an unidentified school in Red Bank, New Jersey. It states that the position requires a four-year degree, but not that the degree must be in any specific specialty.

Another announcement is for a pre-kindergarten teacher to work for an unidentified school in Trappe, Pennsylvania. It states that the position requires a bachelor of science degree, but not that the degree must be in any specific specialty.

Another announcement was placed by [REDACTED], in Waterford, Connecticut, for a kindergarten teacher. It states that the position requires a bachelor's degree in education.

Another announcement was placed by [REDACTED] Center for various positions in Plainville, Connecticut. It states that its teaching positions require a minimum of an associates degree in early childhood education.

In her June 10, 2009 letter, the petitioner's executive director stated that the parents of its students are mostly professionals with high aspirations for their children, and the school is obliged to deliver education at a very high level in order to be successful. She stated that, for that reason, the position requires a professional educator. She reiterated that the proffered position requires a bachelor's degree in teaching, communications, math, or language, or a related field, or a foreign equivalent.

The petitioner's executive director again cited the *O\*Net Online* section pertinent to kindergarten teachers to support the proposition that the proffered position requires a bachelor's degree. She also cited the U.S. Department of Labor, Bureau of Labor Statistics (DOL) *Occupational Outlook Handbook (Handbook)* and *America's Career InfoNet* for the proposition that kindergarten teaching positions normally require bachelor's degrees. She also stated that the vacancy announcements provided show that kindergarten teacher positions, such as the proffered position, normally require a bachelor's degree.

The petitioner's executive director also provided a paragraph pertinent to each of the listed duties of the proffered position, asserting that they require a bachelor's degree.

The director denied the petition on August 24, 2009, finding, as was noted above, that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel provided a brief and additional evidence. The AAO dismissed the appeal as moot on July 5, 2011, then reopened it *sua sponte* on August 25, 2011.

The evidence provided on appeal included an evaluation of the proffered position by a professor of education and philosophy at Stanford University. His assertions are addressed below.

In the appeal brief, counsel reiterated that the proffered position is a kindergarten teacher position. Counsel again cited *O\*Net Online*, *America's Career InfoNet*, and the *Handbook* for the proposition that the proffered position requires a bachelor's degree. Counsel also asserted that the director failed to consider the vacancy announcements submitted, and provided an explanation of the need for a bachelor's degree in order to perform the various duties of the proffered position. Counsel reiterated the petitioner's executive director's assertions as to why the various duties of the proffered position require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by establishing (1) the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

Counsel and the petitioner's executive director have indicated that, in the proffered position, the beneficiary would teach kindergarten. The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The *Handbook* describes the duties of kindergarten teacher positions, in the chapter entitled "Teachers—Kindergarten, Elementary, Middle, and Secondary," as follows:

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<sup>1</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.

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.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos318.htm> (last accessed January 17, 2012).

The AAO observes that the proffered position is at a private school. The *Handbook* only indicates that such positions *may* require a bachelor's degree, rather than that it is normal requirement. Further, the *Handbook* does not indicate that, even for those positions that require a bachelor's degree, the degree must be in a specific specialty directly related to the proffered position. The *Handbook* offers no support for the proposition that kindergarten teacher positions normally require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Counsel also cited *O\*Net Online* and *America's Career InfoNet* as evidence that kindergarten teacher positions require bachelor's degrees.

The *O\*Net* service categorizes kindergarten teacher as a Job Zone 4 occupation. Whether the proffered position is in a specialty occupation is determined by the duties of the position, however, rather than the job title the petitioner gives the position.

In any event, a designation of Job Zone 4 indicates that a position requires considerable preparation. It does not, however, signify that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). *O\*Net* explains that its Job Zone 4 designation signifies only that most but not all of the occupations within it require a bachelor's degree. Further, the *O\*Net Online Help Center's* discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. 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. Therefore, despite counsel's assertions to the contrary, the *O\*Net* information is not probative of the proffered position qualifying as a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

*America's Career InfoNet* indicates that the "Most Common Educational/Training Level" for kindergarten teachers is a bachelor's degree. That it is the most common educational level does not indicate that a bachelor's degree is normally a minimum requirement. Further, that site does not suggest that a kindergarten teacher position requires a minimum of a bachelor's degree or the equivalent in any specific specialty. It contains no indication that kindergarten teacher positions qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

Counsel asserted that the vacancy announcements provided show that kindergarten teacher positions normally require a bachelor's degree. The AAO observes that, of the nine vacancy announcements provided, two do not appear to require a bachelor's degree. Further, merely demonstrating that the position requires a bachelor's degree is insufficient. The petitioner is obliged to show that the proffered position normally requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Only one of the vacancy announcements submitted requires a minimum of a bachelor's degree in early childhood education. Another one requires a bachelor's degree in education. The remaining seven do not require a minimum of a bachelor's degree or the equivalent in any specific specialty. Thus, the vacancy announcements provided do not support the proposition that the proffered position qualifies as a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, even if all nine vacancy announcements unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the nine announcements is statistically insufficient to demonstrate a normal requirement for kindergarten teachers.<sup>2</sup>

The evaluation provided concludes that kindergarten teacher positions require a minimum of a bachelor's degree or the equivalent in a specific specialty. The evaluator stated, in part:

Companies seeking to employ a Kindergarten Teacher require prospective candidates to have a strong foundation in the field of Education which can only be obtained through a Bachelor's degree or progressively responsible experience in the field of Education.

The evaluator's statements indicate no more than the evaluator's opinion that "Companies seeking to employ a Kindergarten Teacher" require that level of education or experience. The evaluator did not seek to support that conclusion by reference to any statistical data or any other authoritative source.

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<sup>2</sup> Although the size of the relevant study population is unknown, the petitioner failed to demonstrate what statistically valid inferences, if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 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 kindergarten teacher requires a bachelor's or higher degree in a specific specialty or its equivalent, it could not be found that such a limited number of postings that may 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.

The evaluator cites no studies, reports, statistics, other authoritative references, or any substantive basis for his conclusions. Further, the evaluator did not seek to reconcile his conclusion with the conclusion of the statistics-based *Handbook*. The AAO finds that, for this reason, the evaluation does not merit significant evidentiary weight.

Further, "progressively responsible experience," which the evaluator indicated might be substituted for a degree, is not necessarily equivalent to a bachelor's degree or higher.

Further still, the AAO finds that neither the body of the "Expert Opinion Evaluation" nor its attached résumé establishes that the evaluator is an expert in the area in which he presents himself as such. Neither these two documents nor any other evidence in the record of proceeding establishes that the evaluator has in any way attained such knowledge about the actual performance requirements of positions such as the one proffered here that his opinion should be accorded any deference by USCIS.

Yet further, the evaluator did not seek to reconcile his conclusion with the statement of the petitioner's executive director, that a bachelor's degree in teaching, communications, math, language or a related field of study is a sufficient educational qualification for the proffered position.

For all of the above reasons, the AAO accords no probative weight to the "Expert Opinion Evaluation." USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record contains no other evidence pertinent to the normal minimum educational requirements for a kindergarten teacher position. Accordingly, the AAO concludes that the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 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.

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 was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, normally requires kindergarten teachers to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of kindergarten teachers that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry. The vacancy announcements provided offer no support for the proposition that the petitioner's industry requires kindergarten teachers to have a minimum of a bachelor's degree or the equivalent in a specific specialty. The evaluation will be accorded no weight for that proposition.

In her June 10, 2009 letter, the petitioner's president stated that the petitioner is unable to provide any evidence pertinent to the recruitment and hiring practices of its competitors.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other kindergarten teacher positions may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The duties of the proffered position appear to encompass routine duties associated with kindergarten teacher positions in general. Nothing about them, as described in the record of proceeding, sets them apart as more complex or unique than other kindergarten positions. Those duties, and the educational requirements for their performance, will be discussed further below.

Further, in her March 31, 2009 letter, the petitioner's executive director stated that a bachelor's degree in teaching, communications, math, language, or a related field would be a sufficient educational qualification for the proffered position. This broad array of diverse and unrelated subject-matter degrees is in itself indicative of the fact that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty and does not, therefore, qualify as a position in a specialty occupation.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the alleged requirement of a degree in two disparate fields does not establish the position as a specialty occupation. See § 214(i)(1) of the Act (requiring in pertinent part the "application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in *the* specific specialty" (emphasis added)); cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in one specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in the specific specialty or its equivalent that is directly related to the proposed position.

Again, the petitioner's executive director stated that a bachelor's degree in teaching, communications, math, language, or a related field would be a sufficient educational qualification for the proffered position. As these dissimilar fields of study fail to delineate a specific specialty or its equivalent, this assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and has not, therefore, met the requirements of the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner's executive director asserted, in her June 10, 2009 letter, that the petitioner normally requires a person who holds the proffered position to have a bachelor's degree or the equivalent, but provided no corroborating evidence. Further, she did not state that the requisite degree must be in any specific specialty, and previously indicated that it need not be. In any event, the record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that 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, or its equivalent.

In the appeal brief, counsel, reiterating arguments made by the petitioner's executive director, discussed each of the duties of the proffered position at length. As to each of the duties of the proffered position, however, the counsel's argument consisted, in essential part, of a conclusory assertion that those duties require a bachelor's degree. For instance, as to the first duty, "Teach, care for, and manage [redacted] with 24 kindergarten-level children, the petitioner's executive director and counsel asserted:

The ability to teach basic skills using the traditional Montessori Method by allowing children to learn through self-directed activities with Judaic elements requires a strong background in communications and time management, as the Head Montessori Guide/Teacher for Primary Level, must be able to coordinate different activities and integrate them into the classroom. This requires knowledge of, not only Montessori

methods, but also teaching knowledge and skills, which can only be acquired through advanced-level university coursework. Thus, the foregoing skills are so complex and unique, that they can only be performed by an individual with a bachelor's degree.

This amounts, in substance, to an unsupported assertion that teaching requires a bachelor's degree. Further, counsel and the petitioner's executive director did not assert, in those arguments, that the duties of the proffered position require a bachelor's degree in any specific specialty. The assertions pertinent to the other duties of the proffered position are substantially similar.

While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The record of proceeding does not present the duties with sufficient specificity to establish their substantive nature, and, thereby, whatever degree of specialization and complexity may reside in them. Therefore, the petitioner has also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), by not developing the proposed duties to an extent establishing their nature as so specialized and complex that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner has not demonstrated that 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. The petitioner has not, therefore, demonstrated that the proffered position meets the requirements of the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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

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