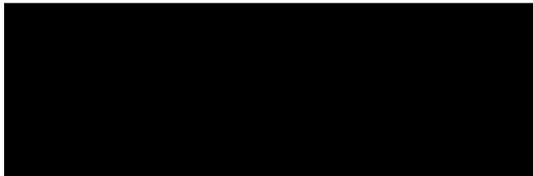


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

Date: **FEB 08 2012** 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 of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be a skilled nursing and rehabilitation services company with 134 employees and a stated gross annual income of \$6.6 million. It seeks to employ the beneficiary as a community relations specialist/healthcare pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

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

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

In this matter, the petitioner seeks the beneficiary’s services as a community relations specialist/healthcare. As described in the petitioner’s support letter dated October 30, 2009, the proffered position would require the beneficiary to perform the following duties:

- Develop and coordinate public relations campaigns to promote programs and services;
- Establish and maintain cooperative relationships with representatives of various organizations and hospitals;
- Coordinate the implementation and compliance of the petitioner's organizational policies and procedures on healthcare services with the medical, nursing, technical, clerical, service, maintenance, and other personnel to ensure a positive public image;
- Confer with management to resolve account-related issues;
- Research market conditions of the petitioner's healthcare services in adjacent counties within California;
- Assist with determining potential markets of healthcare services; and
- Attend various trade shows and community gatherings to promote the petitioner's programs and services.

In its support letter, the petitioner also states that it requires, at a minimum, a bachelor's degree in mass communications or nursing science. The petitioner submitted copies of the beneficiary's foreign degrees and college transcripts, as well as a credential evaluation finding that the beneficiary's foreign education is equivalent to a U.S. Bachelor of Arts degree in mass communications and a U.S. Bachelor of Science degree in nursing science.

On November 17, 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; (3) evidence to show that an industry-related professional association has made a bachelor's degree in a specific specialty a requirement for entry into the field; (4) letters or affidavits from firms or individuals in the industry that attest that such firms routinely employ and recruit only degreed individuals; and (5) copies of the petitioner's present and past job vacancy announcements.

In response to the director's RFE, the petitioner broke down the day-to-day responsibilities of the proffered position as follows:

- Develop and coordinate public relations campaigns (20%);
- Promote programs and services as well as establish and maintain cooperative relationships with representatives of various organizations and hospitals (15%);
- Coordinate with technical, medical, nursing, clerical, service, maintenance, and other personnel in order to ensure the implementation and compliance of the petitioner's organizational policies and procedures on healthcare services to ensure a positive public image (20%);
- Confer with management to resolve account-related issues (10%);
- Research the market conditions relative to target organizations and areas (15%);
- Assist in determining the potential for proposed and existing healthcare services (10%); and
- Attend trade shows and community gatherings to promote the petitioner's programs and services (10%).

In addition, counsel for the petitioner submitted an expert opinion letter and seven job vacancy announcements in response to the RFE.

The director denied the petition, finding 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 states on the Form I-290B that the director erred by finding that the proffered position is not a specialty occupation and cites 8 C.F.R. § 101(a)(15)(H)(i)(b) and § 214.2(h)(4).¹ Counsel also states “[t]here is no requirement that a baccalaureate level of education in [a] “specific specialty” is required for a position to qualify as a specialty occupation under 8 C.F.R. § 101(a)(15)(H)(i)(b).”² Furthermore, counsel indicates that the director misconstrued the citation of *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) in the response to the RFE and erred by not stating the reasons for refusing the expert opinion letter by [REDACTED]

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "Mass Communications or Nursing Science" for the proffered position is inadequate to establish that the proposed position qualifies as 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 claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in mass communications or nursing science. As these two dissimilar fields of study fail to delineate a specific specialty or its equivalent, this assertion is

¹ Counsel has incorrectly cited the statutory and regulatory authorities. Counsel should have cited section 101(a)(15)(H)(i)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

² This is also incorrectly cited by counsel. It should be cited as section 101(a)(15)(H)(i)(b) of the Act. In addition, counsel appears to have overlooked 8 U.S.C. § 1184(i)(1), which clearly states that a specialty occupation requires in part the “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.” (Emphasis added.)

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.

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)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The AAO agrees with the director that the proffered position is closest to that of a public relations specialist as described in the *Handbook*. The *Handbook's* description of public relations specialists is, in part, as follows:

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

³ 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.

groups to establish and maintain cooperative relationships between them and representatives from print and broadcast journalism.

* * *

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.

See Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, 2010-11 Ed., "Public Relations Specialists," <http://www.bls.gov/oco/ocos086.htm> (accessed Jan. 13, 2012). In its section "Training, Other Qualifications, and Advancement" for public relations specialists, the *Handbook* states the following, in part:

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.

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.

Id. Although a bachelor's degree in a communications-related field may well prepare someone for the position, the *Handbook* stops short of stating that at least a bachelor's degree or the

equivalent in a specific specialty is a normal minimum requirement for public relations specialists. Thus, the *Handbook* does not support the proffered position as being a specialty occupation.

Second, the AAO will discuss the DOL's Foreign Labor Certification Data Center Online Wage Library for Public Relations Manager submitted by counsel in response to the RFE, which counsel points out it indicates a Job Zone 4. First, this evidence is irrelevant to this matter as it is for public relations manager positions rather than public relations specialist 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 a specific specialty. A designation of Job Zone 4 indicates that a position requires considerable preparation. It does not, however, demonstrate 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). See the *O*NET* Online Help Center, at <http://www.onetonline.org/help/online/zones> (explaining that Job Zone 4 signifies only that *most* but not all of the occupations within it require a bachelor's degree). Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite counsel's assertions to the contrary, the *O*NET* information is not probative of the proffered position qualifying as a specialty occupation.

The AAO will now address the expert opinion letter submitted by counsel in response to the RFE. The letter is from [REDACTED] Graduate School of Business of Pace University. In the letter, [REDACTED] states "the position is specialized in nature, requiring the ability to apply the knowledge associated with the attainment of a bachelor's-level degree in [c]ommunications, or a closely related field, and that it is fully reasonable for an employer such as [the petitioner] to establish a specialty requirement for such a position." [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner. [REDACTED] also states "it is a general, industry-standard practice for a company with commercial and operational objectives comparable to those of [the petitioner] to hire a professional-level [c]ommunity [r]elations [s]pecialist (i.e., a [c]ommunity [r]elations [s]pecialist with at least a bachelor's-level educational background in communications or a related field)." Again, however, [REDACTED] did not provide any basis for his opinion such as a labor market survey or study. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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'r 1988). Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is 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.

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

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 for at least a bachelor's degree in a specific specialty or its equivalent.

In addition, as previously discussed, the expert opinion letter submitted by counsel in response to the RFE is not deemed credible as [REDACTED] did not list or cite the reference materials on which he relied as a basis for his conclusion that it is a general, industry-standard practice to require a bachelor's degree in a specific specialty or its equivalent for the proffered position such that it does not refute the statistics-based findings of the Bureau of Labor Statistics that a specialty, baccalaureate degree is not a minimum entry requirement for this occupation.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted copies of seven advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the skilled nursing and rehabilitation 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 were 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, two of the advertisements are for positions in different industries and dissimilar organizations and, thus, they cannot be found to be parallel positions. Moreover, while one of the advertisements is for a position in the same industry, it appears to be for a \$2.5 billion company and, therefore, it cannot be found to be a parallel position in a similar organization. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁴

⁴ 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 seven job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar skilled nursing and rehabilitation services companies. See generally [REDACTED]

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).

Furthermore, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of community relations specialist/healthcare. As such, the petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

Specifically, even though the petitioner and its counsel claim that the proffered position's duties are so complex and unique that a bachelor's degree is required, the petitioner failed to demonstrate how the community relations specialist/healthcare's duties, as described, require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While one or two courses in communication or healthcare may be beneficial in performing certain duties of a community relations specialist position for a skilled-nursing and rehabilitation services company, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty are required to perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other public relations specialist positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than public relations specialist positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of community relations specialist/healthcare is so complex or unique relative to other public relations specialist positions

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 community relations specialist/healthcare for a 134-person skilled nursing and rehabilitation services company 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.

that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Furthermore, the petitioner indicated that the proffered position is a new position and that no one has held the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁵

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 or its equivalent. The *Handbook* describes the duties of the proffered position as analogous to that of a public relations specialist, a position that does not require a bachelor's degree in a specific specialty. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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.

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.

⁵ 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"). Here, and as noted above, the petitioner's stated requirement of a bachelor's degree in two disparate fields indicates that the proffered position does not require a degree in a specific specialty.

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