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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

[Redacted]

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Date: **JUL 03 2012** Office: VERMONT SERVICE CENTER File: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Perry Rhew*  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director had approved this H-1B nonimmigrant visa petition for employment of the beneficiary as an H-1B temporary nonimmigrant worker 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 position was approved for what was designated as a jewelry-designer position. However, thereafter an onsite visit was conducted at the beneficiary's work location, as specified in the petition. Upon subsequent review of the record of proceeding upon which approval of the petition was based, the director issued a Notice of Intent to Revoke (NOIR), and ultimately did revoke the approval of the petition on two separate and independent grounds. As will be discussed below, the AAO finds that the petitioner has not overcome the specified grounds for revocation. Accordingly, the appeal will be dismissed, and the approval of the petition will be revoked,

The director identified two grounds for the NOIR, and the director's subsequent decision to revoke the approval of the petition were (1) evidence that the petitioner was not conducting business at the location specified in the Form I-129, and (2) the director's determination that the approval of the petition appeared erroneous, in that "it does not appear that the [proffered] position of jewelry designer qualifies as a specialty occupation."

U.S. Citizenship and Immigration Services (USCIS) may revoke the approval of an H-1B petition, on notice and an opportunity to rebut, pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
  - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
  - (2) The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
  - (3) The petitioner violated terms and conditions of the approved petition; or
  - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
  - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.
- (B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for

the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

As a preliminary matter, the AAO finds that the bases specified for the revocation action are proper grounds for such action. The director's statements in the NOIR regarding the evidence indicating that no business was being conducted at the work location specified in the Form I-129 were adequate to notify the petitioner of the intent to revoke approval of the petition in accordance with the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), that is, on the ground that "[t]he statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact." The asserted failure to establish the proffered position as a specialty occupation comports with the ground for revocation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), that is, "[t]he approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2(h)(11)(iii) this section or involved gross error."

The AAO will now discuss the reasons for its finding that the petitioner has not overcome the grounds for the director's revocation of the approval of this petition.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on January 23, 2009. The petitioner stated that it is an enterprise engaged in jewelry design and sales, established in 1996, with one employee. It did not provide its current gross annual revenue and net annual income.

As already noted, the petition was filed, and approved, for what the petitioner designated as a jewelry-designer position. Thereafter, on August 12, 2009, an administrative site visit was conducted to verify the information within the petition. The director reviewed the report regarding the site visit and then issued the NOIR. The petitioner did not submit a response to the NOIR, and, on February 10, 2010, the director revoked the approval of the petition. On appeal, the petitioner asserts that the director erred in the decision to revoke the approval of the petition.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's NOIR; (3) the director's revocation notice; and (4) the Form I-290B and the allied submissions on appeal. The AAO reviewed the record in its entirety before issuing its decision, and it has reviewed and taken into consideration all of the documents submitted on appeal.

In this matter, the petitioner stated on the Form I-129 and supporting documentation that it seeks the beneficiary's services as jewelry designer on a full-time basis. In its letter of support, the petitioner described the proposed duties of the beneficiary as "the design, manufacture, finish, and repair of jewelry and precious metal products." The director approved the petition on March 8, 2009.

USCIS conducted an administrative site-visit on August 12, 2009. On the Form I-129, the petitioner listed the beneficiary's current U.S. address (on page 2), current residential address (on page 12) and address where the beneficiary would work (on page 3) as [REDACTED] Lawrenceville, Georgia. The officer conducting the site visit determined that the address was located in a residential area and that it did not appear that any business was being conducted at this address. The petitioner had not submitted a change of address to USCIS. A search of publically available records did not reveal a new address or telephone number for the petitioning business. The officer spoke with the owner of the petitioning company, who stated that he was now operating the business from his home at this address. The beneficiary was not located for an interview.

The director reviewed the results of site visit report, and sent a notice indicating the director's intention to revoke the approval of the petition. The petitioner did not submit a response to the NOIR. On February 10, 2010, the director revoked the approval of the petition. Counsel for the petitioner submitted an appeal.

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one requiring the following:

- (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 the following:

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 make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

As previously mentioned, 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. *See generally 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 AAO recognizes the U.S. Department of Labor's *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 petitioner and counsel assert that the proffered position falls under the occupational category "Jewelers and Precious Stone and Metal Workers." The *Handbook* describes the duties of "Jewelers and Precious Stone and Metal Workers" in the subsection entitled "What Jewelers and Precious Stone and Metal Workers Do" and states the following about the duties of this occupation:

Jewelers and precious stone and metal workers design, manufacture, and sell jewelry. They also adjust, repair, and appraise gems and jewelry.

#### Duties

Jewelers and precious stone and metal workers typically do the following:

- Examine and grade diamonds and other gems
- Create jewelry from gold, silver, and precious gemstones
- Shape metal to hold the gems when making individual pieces
- Make a model with carved wax (a mold) or with computers, and then make (cast) pieces with the model
- Solder pieces together and insert stones
- Smooth joints and rough spots and polish smoothed areas
- Inspect finished products to ensure proper gem spacing and metal shine
- Repair jewelry by replacing broken clasps, enlarging or reducing ring sizes, resetting stones, or soldering pieces together

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<sup>1</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

- New technology is helping to produce high-quality jewelry at a reduced cost and in less time. For example, lasers are often used for cutting and improving the quality of stones, for intricate engraving or design work, and for inscribing personal messages or identification on jewelry. Jewelers also use lasers to weld metals together with no seams or blemishes, improving the quality and appearance of jewelry.

Some manufacturing firms use computer-aided design and manufacturing (CAD/CAM) to make product design easier and to automate some steps. With CAD, jewelers can create a model of a piece of jewelry on the computer and then see the effect of changing different aspects—the design, the stone, the setting—before cutting a stone or taking other costly steps. With CAM, they then create a mold of the piece, which makes producing many copies easy.

Individual jewelers also use CAD software to design custom jewelry. They let the customer review the design on the computer and see the effect of changes so the customer is satisfied before committing to the expense of a customized piece of jewelry.

Jewelers and precious stone and metal workers usually specialize:

**Precious metal workers** expertly manipulate gold, silver, and other metals.

**Gemologists** analyze, describe, and certify the quality and characteristics of gem stones. After using microscopes, computerized tools, and other grading instruments to examine gem stones or finished pieces of jewelry, they write reports certifying that the items are of a particular quality.

**Jewelry appraisers** carefully examine jewelry to determine its value and then write appraisal documents. They determine value by researching the jewelry market and by using reference books, auction catalogs, price lists, and the Internet. They may work for jewelry stores, appraisal firms, auction houses, pawnbrokers, or insurance companies. Many gemologists also become appraisers.

**Bench jewelers** usually work for jewelry retailers, doing tasks from simple jewelry cleaning and repair to making molds and pieces from scratch.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Jewelers and Precious Stone and Metal Workers, on the Internet at <http://www.bls.gov/ooh/production/jewelers-and-precious-stone-and-metal-workers.htm#tab-2> (visited June 27, 2012).

The AAO finds that the general description of the occupation category "Jewelers and Precious Stone and Metal Workers" in the *Handbook* encompasses the duties of the proffered position as

described by the petitioner and counsel. As will be discussed in more detail later in the decision, it must be noted that the petitioner by virtue of the related wage-level specified on the Labor Condition Application (LCA) indicated the position is a low-level, entry position relative to others within the occupation.

The *Handbook* provides the following information in the subsection entitled "How to Become a Jeweler or Precious Stone and Metal Worker" for this occupational category:

Jewelers have traditionally learned their trade through long-term on-the-job training. This method is still common, particularly in jewelry manufacturing, but a growing number of workers now learn their skills at trade schools.

### **Education**

Many trade schools offer training for jewelers. Course topics can include introduction to gems and metals, resizing, repair, and computer-aided design (CAD). Programs vary from 6 months to 1 year, and many teach students how to design, cast, set, and polish jewelry and gems, as well as how to use and care for a jeweler's tools and equipment. Graduates of these programs may be more attractive to employers because they require less on-the-job training.

Some students earn a bachelor's degree in fine arts or a master's degree in jewelry design.

### **Work Experience**

Some workers gain their skills through related work experience. This may include previous experience as a sales person in retail jewelry stores.

### **Training**

In jewelry manufacturing plants, workers develop their skills through informal apprenticeships and on-the-job training. The apprenticeship or training lasts up to 1 year, depending on the difficulty of the specialty. Training usually focuses on casting, setting stones, making models, or engraving.

### **Advancement**

Advancement opportunities are limited and depend on an individual's skill and initiative. In manufacturing, some jewelers advance to supervisory jobs, such as master jeweler or head jeweler. Jewelers who work in jewelry stores or repair shops may become managers; some open their own business.

Jewelers and precious stone and metal workers who want to open their own store should first establish themselves and build a reputation for their work within the jewelry trade. After they get sufficient sales, they can acquire the necessary inventory for a store from a jewelry wholesaler. Also, because the jewelry

business is highly competitive, jewelers who plan to open their own store should have sales experience and knowledge of marketing and business management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 Edition*, Jewelers and Precious Stone and Metal Workers, on the Internet at <http://www.bls.gov/ooh/production/jewelers-and-precious-stone-and-metal-workers.htm#tab-4> (visited June 27, 2012).

Contrary to counsel's assertion, the *Handbook* does not state that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. There is no indication in the *Handbook* that, as an occupational group, "Jewelers and Precious Stone and Metal Workers" require at least a bachelor's degree in a specific specialty. The *Handbook* states jewelers have traditionally learned their trade through long-term on-the-job training but that a growing number of workers learn their skills at trade schools. The *Handbook* further states that many trade schools offer training for jewelers, and that programs vary from six months to one year. Even though the *Handbook* states that some students earn a bachelor's degree in fine arts or a master's degree in jewelry design, it is clear that such a degree is not a normal minimum entry requirement for the occupation.

The AAO notes that the description of the proposed duties for the petitioner's proffered position is limited to generic and generalized functions that do not convey any particular level of complexity, uniqueness and/or specialization of tasks, and which, even when read in the context of the evidence submitted in support of the petition, do not establish any necessary correlation between the beneficiary's work and a need for a particular educational level of highly specialized knowledge in a specific specialty. The petitioner and counsel have not adequately established their assertion that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position. Their assertions are not supported by documentation in the record. 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 petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a categorical requirement for at least a bachelor's degree in a specific specialty. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that position is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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.

The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

As previously mentioned, the petitioner described its type of business as an enterprise engaged in jewelry design and sales with one employee. The petitioner did not provide its current gross annual income and net annual income on the Form I-129 petition. A review of the petitioner's 2009 tax returns indicates that its gross annual revenue was approximately \$20,500. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 339911 – "Jewelry (except Costume) Manufacturing."<sup>2</sup> The U.S. Department of Commerce, Census Bureau states the following about this industry:

339911 – Jewelry (except Costume) Manufacturing

This U.S. industry comprises establishments primarily engaged in one or more of the following: (1) manufacturing, engraving, chasing, or etching precious metal solid or precious metal clad jewelry; (2) manufacturing, engraving, chasing, or etching personal goods (i.e., small articles carried on or about the person, such as compacts or cigarette cases) made of precious solid or clad metal; and (3) stamping coins.

See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, Jewelry (except Costume) Manufacturing, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (visited June 27, 2012).

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. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the petitioner's industry attesting that a degree is a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from firms or individuals in the industry to meet this criterion of the regulations.

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<sup>2</sup> NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, Census Bureau, NAICS on the Internet at <http://www.census.gov/eos/www/naics/> (visited June 27, 2012).

The petitioner and counsel provided several job announcements with the appeal. However, upon review of the documents, the AAO finds that they do not establish that similar organizations to the petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions.

For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

The AAO notes that all of the postings provided by the petitioner are devoid of sufficient information regarding the advertising organizations to provide a legitimate comparison of the business operations. Moreover, the petitioner has failed to establish that the advertising organizations work in the same industry as the petitioner. Further, contrary to the purpose for which the advertisements were submitted, the vast majority of the postings state that a bachelor's degree is required, but do not indicate that a bachelor's degree in a *specific specialty* is required. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the position. Additionally, the information about the duties and responsibilities of the advertised positions and the one proffered here is too generalized to support a meaningful comparison between them, or a conclusion that the positions are parallel in their actual performance and knowledge requirements.

More specifically, the petitioner submitted the following job postings:

- An advertisement by *Peyote Bird Designs* for a *Jewelry Designer*. The advertisement lists the company's industry as "Manufacturing – Other." In the advertisement, the company states that it continues to expand its design department and that it has "rapid growth across [its] sterling, semi-precious and trend jewelry lines." No further information regarding the nature of the company or its business operations is provided. The content of the advertisement and the record's information about the petitioner's business operations are too limited and generalized to establish that the advertising organization is similar to the petitioner.

Most notably, the advertisement states that the educational level for the position is a bachelor's degree. The posting does not indicate that a bachelor's degree in a *specific specialty* is required.

Additionally, the posting states that a minimum requirement is "at least 5 years of experience designing bridge or costume jewelry for mainstream retailers" and that "[s]ourcing and Asia travel experience required." Thus, it is not clear that the advertised position is parallel to the proffered position, and the

petitioner has not supplemented the record to establish that the positions are parallel.

- An advertisement for Cyr Associates, Inc. for a Costume Jewelry Designer. Cyr Associates, Inc. is a staffing company. The advertisement states that the client is "a highly successful designer and manufacturer of branded, private label and licensed costume jewelry sold to mass markets, department stores, and specialty store accounts." The industry is listed as "Consumer Packaged Goods Manufacturing." The product focus is the "young tween market." The content of the advertisement and the record's information about the petitioner's business operations are too limited and generalized to establish that the advertising organization is similar to the petitioner.

Further, the advertisement states that the educational level for the position is a bachelor's degree, but does not indicate that a bachelor's degree in a *specific specialty* is required.

- An advertisement for Alexis Bittar, Inc. for a Fine Jewelry Designer / Costume Jewelry Designer. The advertisement states that the company is a "leading costume jewelry brand." The industry is listed as "Manufacturing - Other." The content of the advertisement and the record's information about the petitioner's business operations are too limited and generalized to establish that the advertising organization is similar to the petitioner.

The advertisement states that the educational level for the position is a bachelor's degree, but it also does not indicate that a bachelor's degree in a *specific specialty* is required.

The AAO notes that the copy of the advertisement is partially illegible at the bottom of the page, and thus it is not possible to review all of the job duties of the advertised position.

- A job posting for F.A.F. Inc. for a Jewelry Designer. The advertisement states that the company is a "Leading Fashion Jewelry Company." The industry is listed as "Consumer Packaged Goods Manufacturing" and "Manufacturing - Other." The posting is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison with the petitioner's business operations.

The job posting states that the educational level for the position is a bachelor's degree. The posting does not indicate that a bachelor's degree in a *specific specialty* is required.

- An advertisement for Lloyd Staffing for a Jewelry Designer. The advertisement states that the client is a "high-end, international jewelry retailer." The posting is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison of the business operations.

The job posting states that a requirement for the position is a "Bachelor of Fine Arts or Masters degree." The posting does not state a specific specialty is required for the Master's degree.

- An advertisement for Claire's for a Jewelry Designer Assistant. The industry is listed as "Fashion, Apparel, Textile." No further information is provided regarding the business operations of the employer. The posting is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison of its business operations with the petitioner's.

The job posting states that a bachelor's degree is required. However, the posting does not indicate that at least a bachelor's degree in a *specific specialty* is required.

- An advertisement for Coach for a Design Assistant - Jewelry. The posting states that the employer "was founded in 1941, and is America's premier accessible luxury accessories brand and a leader in international markets." The employer also states that it is "a designer and marketer of high quality, modern accessories." It appears that the advertisement is for an organization whose size, scope of operations and number of employees may exceed the petitioner's. No further information is provided regarding the business operations of the advertising employer. Consequently, the posting is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison of its business operations with the petitioner's so as to conclude that the two firms are substantially similar.

The job posting states that a bachelor's degree is required. However, the posting does not indicate that at least a bachelor's degree in a *specific specialty* is required.

- A job posting for Avon for a Senior Designer, Global Jewelry. The advertisement is for "the world's largest direct selling company." It appears that the advertisement is for an organization whose size, scope of operations and number of employees may exceed the petitioner's. No further information is provided regarding the business operations of the advertising employer. Consequently, the posting is devoid of sufficient information regarding the

advertising organization to conduct a legitimate comparison of the business operations.

The position is "[r]esponsible for the ideation, direction and execution of Global jewelry and watch business" and involves "extensive travel" including for trend shopping, global conferences and product development trips to China. The employer states that candidates must have a bachelor's degree in fine arts design, jewelry making or related field as well as a minimum of ten years of jewelry design experience and experience working with overseas vendors. Additionally, management experience is desired. The requirements of the position suggest that the advertised position is a more senior-level position and does not involve tasks that are the same or similar to those of the proffered position, and the petitioner has not established otherwise.

To meet this prong of the regulations, the petitioner must 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. The AAO finds that the petitioner has not done so. As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements 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 required a bachelor's or higher degree in a specific specialty or its equivalent for organizations that are similar to the petitioner, 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into

positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The 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 shows that the position is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specialty occupation.

A review of the record indicates that the petitioner has failed to demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO notes that the petitioner did not provide any documentation to indicate that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level based upon the occupational classification "Jewelers and Precious Stone and Metal Workers" at a Level 1 (entry level) wage.

Wage levels should be determined only after selecting the most relevant *O\*NET* occupational code classification. Then, a prevailing-wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.<sup>3</sup> Prevailing wage determinations start with an entry level wage (i.e. Level 1) and progress to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.<sup>4</sup> DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate

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<sup>3</sup> DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance* (Revised Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

<sup>4</sup> A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.<sup>5</sup>

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.<sup>6</sup> A Level I wage rate is described by DOL as follows:

**Level 1** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See DOL, Employment and Training Administration's Prevailing Wage Determination Policy Guidance (Revised Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

By virtue of the related wage level specified therein, the LCA indicates that the proffered position is a low-level, entry position relative to others within the occupation. Based upon that wage rate, the beneficiary is a beginning level employee who has only a basic understanding of the occupation. He will be expected to perform routine tasks that require limited, if any, exercise of judgment. The beneficiary will work under close supervision, and he will receive specific instructions on required tasks and expected results. His work will be closely monitored and reviewed for accuracy. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position. Furthermore, the petitioner has not established 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 in a specific specialty.

It is further noted that although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, the petitioner failed to sufficiently demonstrate how the jewelry designer's duties 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. That is, the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or the equivalent.

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<sup>5</sup> DOL, Employment and Training Administration's Prevailing Wage Determination Policy Guidance (Revised Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

<sup>6</sup> *Id.*

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 any of the position. While a few related courses may be beneficial in performing certain duties of a jewelry designer position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other 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 is so complex or unique relative to other positions 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).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.<sup>7</sup>

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<sup>7</sup> To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty

The petitioner did not provide any documentary evidence regarding its current or past recruitment efforts for this position. The petitioner did not submit any information regarding employees who have previously held the position. The record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 384. 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").

On appeal, counsel claims that the proffered position is the same position in job title and duties as previously approved H-1B petitions filed by the petitioner on behalf of the beneficiary. The director's decision does not indicate whether the prior approvals of the other nonimmigrant petitions were reviewed. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. There is no requirement either in the regulations or in USCIS procedural documentation requiring nonimmigrant petitions to be combined in a single record of proceeding.<sup>8</sup> Accordingly, the director was not required to request and obtain a copy of the prior H-1B petitions.

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occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

<sup>8</sup> USCIS is not required to review previous nonimmigrant petitions when adjudicating extension petitions.

In this case, the petitioner and counsel failed to submit copies of the prior H-1B petitions and their respective supporting documents. As the record of proceeding does not contain the allegedly approved petitions, there were no underlying facts to be analyzed and, therefore, no prior, substantive reasons could have been provided to explain why deference to the approvals of the prior H-1B petitions was warranted. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act.

The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

In the instant case, the record of proceeding does not establish that the petitioner normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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.

The petitioner does not claim, and did not submit any evidence to establish, that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO again incorporates this decision's earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position on the LCA as a low-level, entry position relative to others within the occupation. This aspect of the record of proceeding weighs heavily against the proposed duties being so specialized and complex that their performance would require the level of knowledge required to satisfy this criterion. Further, the petitioner has not provided any documentary evidence to establish that the nature of the specific 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. Moreover, as reflected in this decision's earlier comments about the position's constituent duties as described in this record of proceeding, the duties of the position are presented in terms of generalized

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Given the various and changing jurisdiction over various nonimmigrant petitions and applications, requiring previously adjudicated nonimmigrant petitions to be reviewed before any newly filed application or petition could be adjudicated would result in extreme delays in the processing of petitions and applications. Furthermore, such a suggestion, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

functions that do not convey what their actual execution would involve, in substantive knowledge and associated educational requirements, within the context of the petitioner's particular business operations.

As the evidence in the record of proceeding does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Accordingly, the director correctly found that the petition was approved in error and the petitioner failed to overcome this ground of the director's NOIR. Therefore, the director properly revoked the approval of the petition, and the appeal must be dismissed.

Moreover, the AAO observes that even if the petitioner had overcome this ground for revoking the approval of the petition – that is, failing to establish the position as a specialty occupation – the petition would still be remanded to the director for issuance of a new NOIR and initiation of a new revocation-on-notice process with regard to this petition's approval because of several additional matters that the AAO observes in the record of proceeding.

In the NOIR, the director requested the petitioner submit probative evidence "in order to demonstrate [its] legal business operations in the United States." As discussed, the AAO determined that the proffered position is not a specialty occupation and the appeal will be dismissed. Thus, the AAO will only briefly address its review of the record of proceeding with regard to the issue of the petitioner "demonstrate[ing] [its] legal business operations in the United States."

On appeal, counsel submits various documents from the State of Georgia and the State of California regarding the petitioner's corporate status in the United States. It must be noted that the director did not specifically request documentation regarding the petitioner's good standing or corporate status. However, the submission on appeal included these documents and the AAO reviewed the information, as well as the public databases from which the petitioner printed the documents.

Records indicate that the petitioner was incorporated on August 14, 1996 in the state of California as a corporation under the name of Chaman Enterprises, Inc. In 2002, Chaman Enterprises, Inc. was registered as a foreign corporation authorized to do business in the state of Georgia; however, the registration and authority to transact business in Georgia as a foreign corporation was terminated by automated administrative dissolution/revocation on July 9, 2005. Counsel for the petitioner did not submit any documents or information regarding the petitioner's corporate status in Georgia for the period from July 10, 2005 to August 5, 2007.

On August 6, 2007, Chaman – Enterprises, Inc. was registered as a foreign corporation with the Georgia Secretary of State based upon its corporate registration in California. The Georgia Secretary of State Corporations Division categorizes an entity as a foreign corporation when the "entity's originating corporation registration was initiated in another state."<sup>9</sup> The Georgia Secretary of State official website does not contain any information showing that Chaman Enterprises, Inc. or Chaman – Enterprises, Inc. has ever been registered as a domestic corporation in the state of Georgia. The AAO observes that the California Secretary of State business entity database shows that Chaman Enterprises, Inc. has been dissolved.<sup>10</sup> As discussed, the petitioner's business registration and authorization to transact business as a foreign corporation in the State of Georgia is based on its California corporation status. Where the original corporation is dissolved in the state where the corporation was initially formed under the laws of that state, its status as a foreign corporation may be terminated and the corporation may no longer be authorized to transact business, in the instant case, in the state of Georgia.

A review of the Georgia Secretary of State official website indicates that the current status of Chaman – Enterprises, Inc. is "Active/Noncompliance."<sup>11</sup> The Georgia Secretary of State indicates that a designation of "Active/Noncompliance" means the entity will be administratively dissolved or revoked (more specifically, "[i]f the status reads 'active/noncompliance', then the entity will be administrative dissolved or revoked this year.")<sup>12</sup> Administrative dissolution is defined by the Georgia Secretary of State as the following:<sup>13</sup>

When an entity fails to timely file an annual report, fails to maintain a registered agent, its duration expires or in several other situations, the Secretary of State may administratively dissolve that entity. The Secretary's authority to do so is granted by statute, and upon dissolution, an entity may no longer carry on its business other than to wind up, liquidate and pay off its creditors.

The AAO notes that the regulation at 8 C.F.R. § 214.2(h)(11)(ii) addresses the grounds for automatic revocation of the approval of a petition and state, in pertinent part, that the "approval of any petition is immediately and automatically revoked if the petitioner goes out of business."

In the instant case, to properly analyze the issue of the petitioner's corporate status and/or legal operations in the United States, the petition could be remanded to the director for review and to contemplate the issuance of a request for evidence or new NOIR and initiation of a new

<sup>9</sup> See Georgia Secretary of State website, *Frequently Asked Questions*, available on the Internet at <http://www.sos.ga.gov/firststop/faqs.htm> (last accessed June 27, 2012).

<sup>10</sup> California Secretary of State website available on the Internet at <http://kepler.sos.ca.gov/cbs.aspx> (last accessed June 27, 2012).

<sup>11</sup> Georgia Secretary of State website, on the Internet at <http://corp.sos.state.ga.us/corp/soskb/Corp.asp?> (last accessed June 27, 2012).

<sup>12</sup> Georgia Secretary of State, *Frequently Asked Questions*, available on the Internet at <http://www.sos.ga.gov/Corporations/Administrative%20Dissolutions%20FAQ.pdf> (last accessed June 27, 2012).

<sup>13</sup> *Id.*

revocation-on-notice process with regard to this petition's approval. However, the petitioner failed to overcome the director's ground for revocation of the approval of the petition by establishing that the proffered position qualifies as a specialty occupation. Accordingly, the AAO finds that it would serve no useful purpose to remand the case to the director (regarding the petitioner's corporate status and/or legal operations in the United States) as the issue is moot.

The AAO notes that it finds that the record of proceeding contains additional issues, not identified by the director in the NOIR that could also be remanded to the director for review and for consideration of issuance of an RFE or new NOIR. More specifically, the petitioner listed the prevailing wage in the LCA as \$30,880 per year, which corresponds to the occupational category "Jewelers and Precious Stone and Metal Workers"- SOC (ONET/OES) code 51-9071.00 for Gwinnett County, Georgia at a Level 1 (entry) based on the all industries database for 7/2007 – 6/2008.<sup>14</sup> The LCA was submitted and certified on January 21, 2009.

The AAO observes that at the time the LCA was filed, the Occupational Employment Statistics (OES) Online Wage Library had published the prevailing wage database for 7/2008 – 6/2009.<sup>15</sup> The prevailing wage for the occupational category "Jewelers and Precious Stone and Metal Workers" at a Level 1, for the area of intended employment, was \$34,008.00 per year – a difference of over \$3,100 per year than the offered salary.<sup>16</sup>

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. *See* section 212(n) of the Act, 8 U.S.C. 1182(n). The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.

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<sup>14</sup> *See* DOL, Online Wage Library available on the Internet at <http://www.flcdatcenter.com/>. All industries database for 7/2008 – 6/2009 with wage level for Jewelers and Precious Stone and Metal Workers - for Gwinnett County, Georgia available on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?area=12060&code=51-9071&year=8&source=1> (last accessed June 27, 2012).

<sup>15</sup> The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. *See* Bureau of Labor Statistics, DOL, on the Internet at <http://www.bls.gov/oes/> (visited June 27, 2012). The OES All Industries Database is available at the Foreign Labor Certification Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatcenter.com/>.

<sup>16</sup> *See* DOL, Online Wage Library, available on the Internet website <http://www.flcdatcenter.com/>. The "All Industries" database for 7/2008 – 6/2009, with wage level designated for Jewelers and Precious Stone and Metal Workers - in Gwinnett County, Georgia, available on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?area=12060&code=51-9071&year=9&source=1> (last accessed June 27, 2012).

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

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

[Italics added]. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. In the instant case, it appears from the record of proceeding that the petitioner failed to offer the beneficiary an adequate wage to serve in the position that meets the applicable statutory and regulatory provisions. However, as previously discussed, the petitioner failed to overcome the director's ground for revocation of the approval of the petition by establishing that the proffered position qualifies as a specialty occupation. Accordingly, the AAO finds that it would serve no useful purpose to remand the case for the director to review the petitioner's offered salary to the beneficiary.

Further, the AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. 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 further, except to note that, in any event, the evaluation of the beneficiary's training and experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, as the claimed equivalency was based on training and experience, there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent. Thus, even if eligibility for the benefit sought had been otherwise established, the appeal could not be granted. That is, for this reason as well, the petition would be remanded to the director to review for issuance of an RFE or NOIR.

In conclusion, based upon a complete review of the record of proceeding, the petitioner has failed to overcome the grounds specified in the NOIR for revoking the petition by establishing that the proffered position is a specialty occupation. Furthermore, even if the petitioner had overcome this ground for revocation of the approval of the petition, the petition would still be remanded to the director for review for issuance of an RFE or NOIR regarding the additional issues discussed above.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met.

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