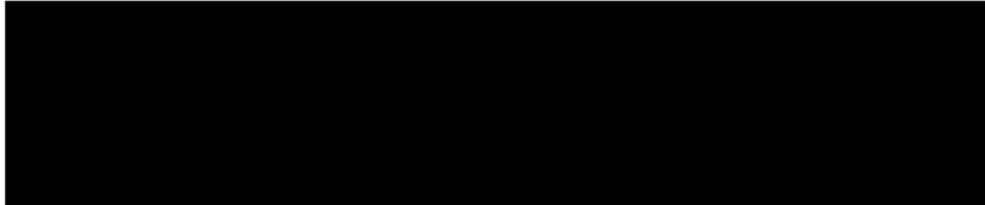


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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Date: **JUL 05 2012**

Office: VERMONT SERVICE CENTER

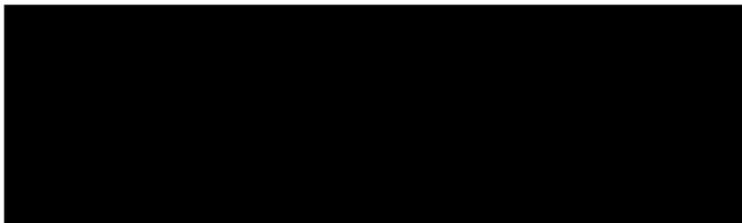
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IN RE: Petitioner:  
Beneficiary:



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 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  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and, in response, the petitioner filed a combined motion to reopen and motion to reconsider. The director subsequently granted the motion but issued a decision affirming the earlier decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on September 21, 2009. The petitioner stated that it is a non-profit organization that promotes cultural projects for men and women. The petitioner also stated that it has 80 employees and a gross annual income of approximately \$1 million. The petitioner failed to provide its net annual income in the Form I-129.

Seeking to employ the beneficiary in what it designates as a director and educational projects advisor position, the petitioner filed this H-1B petition in an endeavor to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on April 27, 2010, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Upon granting the petitioner's subsequently filed combined motion to reopen and motion to reconsider, the director affirmed the earlier decision to deny the petition. On appeal, counsel asserts that the director's basis for the denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's requests for evidence (RFE); (3) the responses to the RFEs; (4) the director's denial letter; (5) the petitioner's Motion to Reopen and Reconsider; (6) the director's Dismissal of the Motion to Reopen and Reconsider; and (7) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established that the proffered position qualifies as a specialty occupation within the meaning of the controlling statutory and regulatory provisions. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

Before proceeding further, the AAO notes that it disagrees with portions of the director's decision in the denial of the petition and in the director's dismissal of the motion, specifically with reference to the director's discussion of *O\*NET OnLine* and the Specific Vocational Preparation (SVP) ratings. The AAO hereby withdraws these statements.<sup>1</sup> However, the AAO finds that the director's ultimate conclusion was correct in determining that the petitioner failed to establish that its proffered position is a specialty occupation in accordance with the applicable statutory and regulatory provisions.

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<sup>1</sup> Later in this decision, the AAO will address the petitioner's *O\*NET OnLine* submission and clarify the AAO's view of this evidence.

The petitioner and counsel are reminded that the AAO conducts appellate review on a *de novo* basis, evaluating the sufficiency of the evidence in the record according to its probative value and credibility. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As previously noted, the AAO reviewed the record of proceeding in its entirety before issuing its decision. It is further noted that the director's statements did not result in the improper granting of a benefit in this matter, i.e., the statements did not change the outcome of this case and were a harmless error. *See Soltane v. DOJ*, 381 F.3d 143; *Black's Law Dictionary* 563 (7th Ed., West 1999) (defining the term "harmless error" and stating that it is not grounds for reversal). Furthermore, it not clear what remedy would be appropriate beyond the motion and appeal process itself. The petitioner has in fact supplemented the record, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with additional evidence.

The petitioner stated that it seeks the beneficiary's services as a director and educational projects advisor on a full-time basis at an annual salary of \$29,000. In a letter of support dated August 12, 2009, the petitioner provided the following job description for the proffered position:

- Responsible to the Board of Directors for the successful operation of the University Residences operated by [the petitioner] in Rio Piedras and Mayaguez and Yaurel Activity Center in accordance with [the petitioner's] philosophy.
- Organize and direct activities that increase cultural and social projection of the Residences and Yaurel Activity center such as: preparatory meetings for University Conferences, professional counseling, study techniques, social promotion camps, ethics seminars.
- Organize and supervise religious doctrine training activities such as Theology courses, Catechism, and Ethics courses.
- Weekly meetings with the Administration of residences and Yaurel Activity Center.
- Evaluation and selection of new residents. Each residence has boarding facilities for 18 residents. In addition, approximately 50 students participate in the daily activities of the residences. Yaurel Activitiy Center is an after-school program and services approximately 75 students per month.
- Establish relations with the Deanships of University campuses in Mayaguez and Rio Piedras; establish public relations with the academic authorities of the universities.
- Provide personal and professional counseling for the students.

- Establish relations with the parents of the residents and organize one meeting per semester with the parents.
- Organize cultural activities for the residences.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on December 14, 2009. The director requested the petitioner submit additional documentation, including evidence to demonstrate that the proffered position is a specialty occupation. The director outlined the evidence to be submitted, which included a more detailed description of the work to be performed by the beneficiary for the entire period requested, including the day-to-day responsibilities and the percentage of time to be spent performing these particular functions each day. The director also asked the petitioner to indicate which specific tasks require the knowledge of someone who holds a baccalaureate degree and how the beneficiary's education relates to the position itself. Additionally, the petitioner was asked to describe the minimum education qualifications required to be a director and educational projects advisor. The director also requested the petitioner provide additional information regarding the organization.

In response to the RFE, the petitioner submitted a letter dated January 25, 2010 and additional evidence. The petitioner provided a job description that is extremely similar to the job description it previously submitted; however, the petitioner rearranged the duties and provided the percentage of time that the beneficiary would spend performing each of the duties. The AAO notes that the percentage of the beneficiary's time spent performing the duties does not equal to 100%. No explanation was provided.

Specifically, the petitioner described the job duties for the proffered position as follows:

- Organize and supervise religious doctrine training activities such as theology courses, catechism, and ethics courses and workshops. (25% of her time will be allocated to this task)
- Organize and direct activities that increase cultural and social projection of the residences and after school center such as: preparatory meetings for conferences and workshops to be held in the residences and center, professional counseling, study techniques, social promotion camps and ethics seminars. (15% of her time will be allocated to this task)
- Provide counseling for students and act as a liaison between the parents and the Residences [sic]. (15% of her time will be allocated to this task)
- Organize cultural activities for the Residents, following [the petitioner's] goals and philosophy. (15% of her time will be allocated to this task)

- Be accountable to the Board of Directors for the successful operation of the university residences and the after school center in accordance with [the petitioner's] philosophy. (10% of her time will be allocated to this task)
- Conduct the evaluation and selection process of new residents residing at the university residence. (10% of her time will be allocated to this task)
- Establish relationships with the academic authorities at the Rio Piedras and Mayaguez universities. (5% of her time will be allocated to this task)

The petitioner further stated that it is a non-profit organization whose main goal is "the integral education and promotion of women in Puerto Rico." The petitioner further described its organizational activities as follows:<sup>2</sup>

Since 1970, with the opening of the first Cultural Center, [the petitioner] has been structuring and promoting co-curricular courses that contribute to the personal development and values and virtues in women, as well as their professional excellence. . . . Our programs are best described therefore, as human services, or social services, because the education in Christian values provided is complementary to formal academic and/or vocational education in the island's schools and universities.

The petitioner stated that it had "developed an assortment of different activities" including university residences and an activity center. In response to the RFE, the petitioner described the university residences as follows:

[The university residences] provide housing for undergraduates and graduate women who wish to take an active part in their own personal development and experience life in a residence. Ethical values and character development are encouraged and students are invited to participate in community services programs. The residence sponsors international and local service projects fostering an active concern for others. The residence is open to women of all faiths.

\* \* \*

[The university residence] offers not only room and board to its residents, but also a myriad of personal formation activities, complimentary to the university formation they are receiving in their respective universities, and social assistance activities for the nearby communities. Participation in these activities is not only accessible for [the] residents, but to any other female students interested in participating. There are also athletic activities, cultural activities and artistic activities for the residents.

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<sup>2</sup> The quotation is from the petitioner's letter dated January 25, 2010 (which repeats almost verbatim the information provided by the petitioner in its letter dated August 12, 2009).

The petitioner stated that the facility offered "residents a library, study rooms, meals, laundry services, and fully furnished rooms" as well as "after-school programs [which] provide residents with the opportunity to participate in an array of seminars and activities geared toward science, literature, culture and social interest." The petitioner claimed that the programs "allow residents to integrate their university career with extracurricular activities, emphasizing humanitarian service to the community, social and cultural growth." The petitioner described some of the activities for the residents, which included providing members with the opportunity to participate in monthly cooking lessons; humanitarian trips to other countries; cleaning one of the island's most visited beaches; visiting hospitals, elderly homes and orphanages as part of the petitioner's social mission; tutoring young children; and serving as counselors in an annual camp in Canada.

The petitioner described its activity center as follows:

[The activity center] is an after-school center for female high school students who receive tutoring in academic subjects and participate in a myriad of after school activities which include handicrafts, training in study methods, counseling, spiritual guidance, and sports, among others.

Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on April 27, 2010.

The AAO will now address the director's basis for denial of the petition, namely, the determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO finds that the evidence fails to establish that the position as described by the petitioner constitutes 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 will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.

The petitioner stated that the beneficiary would be employed in a director and educational projects advisor position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> The petitioner and counsel assert that the section of the *Handbook* most relevant to this proceeding is the chapter "Instructional Coordinators."<sup>4</sup> The AAO reviewed the chapter of the *Handbook* on "Instructional Coordinators" but did not find that the duties of the proffered position correspond to this occupational classification. The *Handbook* describes the duties of "Instructional Coordinators" in the subsection entitled "What Instructional Coordinators Do" and states the following about the duties of this occupation:

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<sup>3</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/>.

<sup>4</sup> U.S. Dep't of Labor, Bureau of Labor Statistics (BLS), *Occupational Outlook Handbook, 2012-13 ed.*, Instructional Coordinators, on the Internet at <http://www.bls.gov/ooh/Education-Training-and-Library/Instructional-coordinators.htm#tab-1> (visited June 29, 2012).

Instructional coordinators oversee school districts' curriculums and teaching standards. They work with teachers and school administrators to implement new teaching techniques to improve the quality of education.

## **Duties**

Instructional coordinators typically do the following:

- Oversee the development of the school system's curriculum
- Arrange for professional development opportunities for teachers
- Evaluate the effectiveness of both the curriculum and teaching methods by analyzing student test data
- Ensure that schools in their district are meeting local, state, and federal regulations and standards
- Review and choose textbooks and other educational materials, such as computer programs
- Stay up to date with teaching techniques and help teachers adopt new strategies
- Help teachers understand and use new technologies in their classes
- Develop procedures to ensure that teachers are properly implementing the curriculum
- Train teachers and other instructional staff in new content or programs
- Mentor or coach teachers who need help improving their skills
- Instructional coordinators assess the effectiveness of the district's curriculum and teaching techniques. They make changes to the curriculum and adopt new teaching strategies and techniques to improve students' test scores and outcomes.

For example, when a state or school district introduces new standards for what students must learn in specific grades, instructional coordinators explain the new standards to teachers and help them develop ways to teach so students learn what the standards cover.

Instructional coordinators are also known as curriculum specialists, instructional coaches, or assistant superintendents of instruction. In some school districts, they specialize in particular grade levels, such as elementary or high school, or specific subjects, such as language arts or math. Other instructional coordinators focus on special education, English as a second language, or *gifted-and-talented programs*.

Coordinators generally travel to schools in their district to work with school administrators and teachers, teach professional development classes, and monitor the implementation of the curriculum.

U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, 2012-13 ed., Instructional Coordinators, on the Internet at <http://www.bls.gov/ooh/Education-Training-and-Library/Instructional-coordinators.htm#tab-2> (visited June 29, 2012).

In the section of the *Handbook* entitled "Work Environment," the *Handbook* states that instructional coordinators "work in public and private schools. Coordinators generally have an office in the headquarters of their school district, but they also spend a lot of time traveling to schools within the district."<sup>5</sup>

The AAO reviewed the record of proceeding, but is not persuaded by the petitioner's claim that the proffered position falls under the occupational category for instructional coordinator positions. Moreover, the petitioner has not provided sufficient evidence to establish that it sponsors courses and/or programs that would necessitate the need for an instructional coordinator. The petitioner repeatedly stated that it is an organization whose "programs are best described . . . as human services, or social services, because the education in Christian values provided is **complementary** to formal academic and/or vocational education in the island's schools and universities." [Emphasis added.]<sup>6</sup> The AAO notes that in the Form LCA, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 611710 – "Educational Support Services."<sup>7</sup> The U.S. Department of

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<sup>5</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, 2012-13 ed., Instructional Coordinators, on the Internet at <http://www.bls.gov/ooh/Education-Training-and-Library/Instructional-coordinators.htm#tab-3> (visited June 29, 2012).

<sup>6</sup> In its letter of support dated January 25, 2010, the petitioner further stated that its residential programs include:

. . . a myriad of personal formation activities . . . and social assistance activities for the nearby communities. Participation in these activities is not only accessible for [the] residents, but to any other female students interested in participating. There are also athletic activities, cultural activities and artistic activities for the residents.

Furthermore, the petitioner stated the following:

[The activity center] is an after-school center for female high school students who receive tutoring in academic subjects and participate in a myriad of after school activities which include handicrafts, training in study methods, counseling, spiritual guidance, and sports, among others.

The petitioner submitted documentation regarding its residential and after-school programs, including brochures, photos of the premises and other documentation. The programs offered by the petitioner appear to be extracurricular activities that students participate in for fun, self-improvement or for leisure. The classes do not appear to lead to a degree or certification, and students voluntarily participate in the activities to learn new skills, for self-enrichment and/or to gain understanding of a subject. The petitioner has not provided sufficient evidence to establish that the beneficiary's duties in the proffered position (which the petitioner claims includes organizing, supervising and/or directing these activities) require the knowledge of someone who holds at least a baccalaureate degree in a specific specialty.

<sup>7</sup> NAICS is used to classify business establishments according to type of economic activity, and each

Commerce, Census Bureau website regarding the NAICS states that this code is designated for "establishments primarily engaged in **providing noninstructional services** that support educational processes or systems." [Emphasis added.] See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, Educational Support Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (visited June 29, 2012).

The AAO further notes that in two entries in the Form I-129 the petitioner designated its business operations under the NAICS code 611430 – "Professional and Management Development Training."<sup>8</sup> The petitioner did not provide an explanation for its designation of the organization under different NAICS codes on various forms in the record of proceeding.

Upon review of the record of proceeding and the chapter regarding "Instructional Coordinators" in the *Handbook*, the AAO finds that the petitioner has not provided sufficient evidence to demonstrate that its director and educational projects advisor position has the same or similar duties, tasks, knowledge, work activities, etc. that are generally associated with "Instructional Coordinators." For example, the AAO notes that the petitioner does not claim to be involved in overseeing school districts' curriculums and teaching standards. This is further exemplified by the fact that the petitioner did not provide any evidence to suggest that the beneficiary will be employed to oversee school districts' curriculums and teaching standards. Additionally, the petitioner does not claim that the beneficiary will work in public or private schools. There is no indication that the proffered position involves ensuring that schools in the district are meeting local, state, and federal regulations and standards. The petitioner does not assert that in the role of director and educational projects advisor that the beneficiary will evaluate the effectiveness of both the curriculum and teaching methods by analyzing student test data. Furthermore, the petitioner's job description of the proffered position does not state that the beneficiary will review and choose textbooks and other educational materials for school districts. The duties of the proffered position do not indicate that the beneficiary will develop procedures to ensure that teachers are properly implementing school districts' curriculum. This is further illustrated by the fact that the petitioner has not established that the beneficiary will assess the effectiveness of the school district's curriculum and teaching techniques. The petitioner also does not claim that when new standards are issued by Puerto Rico or the school district for what students must learn, that the beneficiary will explain the new standards to teachers and help them develop ways to teach so students learn what the standards cover. The duties of the proffered position, to the extent that they are depicted in the record of proceeding, indicate that the beneficiary may

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establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (visited June 29, 2012).

<sup>8</sup> The AAO reviewed the U.S. Department of Commerce, Census Bureau website regarding NAICS code 611430 – "Professional and Management Development Training." It states in pertinent part, that this industry "comprises establishments primarily engaged in offering an array of short duration courses and seminars for management and professional development" and that the training "may be provided directly to individuals or through employers training programs; and courses may be customized or modified to meet the special needs of customers." See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, Professional and Management Development Training, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch#> (visited June 29, 2012).

perform a few tasks in common with this occupational group, but not that the beneficiary's duties would constitute an instructional coordinator position, and not that they would require the range of specialized knowledge that characterizes this occupational category.

In the motion, the petitioner claimed that it was providing a comparison of the beneficiary's duties and the duties for "Instructional Coordinators" as described in the *Handbook*. However, in its comparison, the petitioner omitted sections and phrases of the *Handbook* that depicted the duties and responsibilities of the occupation. The petitioner did not adequately address the duties that are typical of "Instructional Coordinators" that the beneficiary will not perform, as well as the duties of the proffered position that are not those of "Instructional Coordinators." To the extent that they are described in this petition, the petitioner has failed to establish that the proposed duties that the beneficiary would perform are at the capacity and level of functions that the *Handbook* uses to generally characterize the occupational category of "Instructional Coordinators." Moreover, although the petitioner asserts that the position falls under the occupational category of "Instructional Coordinators," it must be noted that the petitioner failed to provide documentary evidence to substantiate its claim that the beneficiary will primarily, or substantially, perform the same or similar duties, tasks and/or work activities that characterize the occupation of instructional coordinators. The totality of the evidence in this proceeding, including information and documentation regarding the proposed duties, the petitioner's business operations, and the petitioner's organizational structure, does not establish that the duties of the proposed position are substantially comparable to those of instructional coordinators as described in the *Handbook*. The petitioner has not established that the proffered position falls under the occupational category of "Instructional Coordinators."

As the petitioner has not demonstrated that the occupational category for the proffered position is falls under the occupational category of "Instructional Coordinators," the AAO will not further address this occupational category as it is not relevant to this proceeding.<sup>9</sup>

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<sup>9</sup> The petitioner has not established that the proffered position falls under the occupational category of "Curriculum Instructors." Thus, the *O\*NET OnLine* Summary Report referenced by the petitioner and counsel for the occupational category is not pertinent to this proceeding. However, after reviewing the director's discussion of the *O\*NET OnLine* Summary Report, the AAO would like to clarify its position on the issue. That is, the AAO reviewed the *O\*NET OnLine* Summary Report but does not find that it is persuasive in establishing that the position qualifies as a specialty occupation that normally requires at least a bachelor's degree or its equivalent in a *specific specialty*.

More specifically, the AAO notes that the *O\*NET OnLine* Summary Report for "Curriculum Instructors" does not state specific educational requirements for the occupation. Rather, the occupation is classified according to a "Job Zone" rating system. The Job Zone classification provides users with a guide to the vocational preparation levels of occupations. The *O\*NET OnLine* Job Zone for the occupational category "Curriculum Instructors" indicates that extensive preparation is needed for this group of occupations, but does not state that a degree must be in a *specific specialty* that closely related to the requirements of that occupation. 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. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, although the AAO reviewed the *O\*NET OnLine* Summary Report provided by the petitioner and counsel, the AAO finds that the submission is not probative evidence of the occupational category

In the Form I-129 petition, the petitioner identified the proffered position as falling under the occupational code 120, which, the AAO notes, is assigned by DOL to the category "Clergy" under the group "Occupations in Religion and Theology."<sup>10</sup> The *Handbook* describes this occupational category as follows:<sup>11</sup>

Conducts religious worship and perform other spiritual functions associated with beliefs and practices of religious faith or denomination. Provide spiritual and moral guidance.

While there may be some general spiritual and/or religious aspects to the beneficiary's job duties in the proffered position of director and educational projects advisor, the petitioner has not established that the beneficiary will primarily serve as a member of the clergy in her performance of these responsibilities. Moreover, aside from the designation of the occupational code in the Form I-129, the petitioner does not claim that the beneficiary will serve in a clergy position.

The director reviewed the job description provided by the petitioner and found that the proffered position falls under the occupational classification of "Residential Advisors." The *Handbook* states, in its entirety, the following about this occupational category:

**Residential Advisors**  
(O\*NET 39-9041.00)

Coordinate activities in residential facilities in secondary school and college dormitories, group homes, or similar establishments. Order supplies and determine necessary maintenance, repairs, and furnishings. May maintain household records and assign rooms. May help residents solve problems or refer residents to counseling resources.

- 2010 employment: 72,600
- May 2010 median annual wage: \$24,440
- Projected employment change, 2010-20:
  - Number of new jobs: 18,100

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being a specialty occupation. Thus, even if the petitioner had established that its proffered position falls under the occupational category "Instructional Coordinators" (which it did not), the *O\*NET OnLine* Summary Report does not establish that the occupation requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in the specific specialty, or its equivalent, as a minimum for entry into the occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

<sup>10</sup> See U.S. Department of Labor, Employment and Training Administration, *Form ETA 9035CP, Appendix 1*, which provides a list of the "Three-Digit Occupational Groups." The form is accessible on the Internet at [http://www.lca.doleta.gov/h1bcl\\_oc.pdf](http://www.lca.doleta.gov/h1bcl_oc.pdf) (visited June 29, 2012).

<sup>11</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Clergy, on the Internet at <http://www.bls.gov/oes/current/oes212011.htm> (visited June 29, 2012).

- Growth rate: 25 percent (faster than average)
- Education and training:
  - Typical entry-level education: Some college, no degree
  - Work experience in a related occupation: Less than 1 year
  - Typical on-the-job-training: Short-term on-the-job training

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed., Data for Occupations Not Covered in Detail, Residential Advisors*, on the Internet at <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (visited June 29, 2012).

The typical duties of the occupational category "Residential Advisors" as described in the *Handbook* contain some aspects in common with the beneficiary's duties as described by the petitioner. However, the AAO finds that the occupational category as described in the *Handbook* does not fully encompass the duties of the proffered position. It is further noted that the *Handbook* does not report that, as an occupational group, "Residential Advisors" require at least a bachelor's degree in a specific specialty. More specifically, the *Handbook* explains that the typical entry-level education for this occupation is some college (but not a degree).

The AAO reviewed the record of proceeding regarding the proffered position and the *Handbook* and finds that the *Handbook* does not support the proposition that the proffered position, as described in the record of proceeding, is one that meets the statutory and regulatory provisions of a specialty occupation. As the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree, or the equivalent in a specific specialty, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the instant case, 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.

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. The record of proceeding does not contain any evidence from the industry's professional association to indicate that a degree is a minimum entry requirement.

In the appeal, the petitioner and counsel submitted two letters from organizations that it claims are similar to the petitioner. A letter from [REDACTED] of the Alderton House, Inc. states, in pertinent part, the following regarding the educational requirements of two of its employees:

Alderton House, Inc. requires that both the Center's Director and the Director of Studies have at least a Bachelor's Degree in their field of study. Highland's Center Director has a Bachelor's Degree in Science, with post-graduate Physician Assistant Certificate; the current Director of Studies holds a PhD in Philosophy from Notre Dame University.

The petitioner also submitted a letter from [REDACTED] stated that "El Zeybal requires that the administrative staff of its Executive Council . . . [h]ave a Bachelor or higher degree." Ms. Sastre continued by stating the following:

At present the members of the Executive Council of El Zeybal have the following education and experience:

Ana Arzol: Bachelor in Environmental Design and Master in Architecture  
Mayra Riestra: Bachelor in Secondary Education with a major in English

Both letters lack sufficient information to reasonably conclude whether or not Ms. [REDACTED] Ms. [REDACTED] are referring to parallel positions to the proffered position. [REDACTED] provided some general information about the organizations, but failed to provide basic information regarding the positions, including the specific roles of the Center's Director, Director of Studies and Executive Council within the organizations. They did not provide the job duties and day-to-day responsibilities of the employees. They did not indicate the knowledge and skills required for the positions, or provide information regarding the complexity of the job duties, independent judgment required, and the amount of supervision received. Moreover, based upon the evidence

provided, it appears that the organizations *do not normally* require a bachelor's degree in a *specific specialty* or its equivalent for their positions.

That is, the writers acknowledge that their employees possess academic credentials in a range of disciplines, including science; philosophy; environmental design and architecture; and secondary education with a major in English. 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. In general, it must be noted that provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same.

Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty."<sup>12</sup> See 214(i)(1)(b) of the Act (emphasis added). Here, the organizations have accepted academic credentials in a variety of academic disciplines for their positions. Thus, even if the petitioner established that the positions were parallel to the proffered position (which it has not), the letters suggest that a bachelor's degree in a *specific specialty* is not required.

It must be noted that even if the letters 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 two organizations (and just four employees) 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 organizations 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").

Thus, based upon a complete review of the record, 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).

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<sup>12</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty.

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 particular position proffered in this petition 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.

The petitioner does not assert or 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 supported by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level based upon the occupational classification "Instructional Coordinators" at a Level 2 (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>13</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>14</sup> DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.<sup>15</sup> DOL states, in pertinent part, that Level 2 wage-rates are assigned to qualified employees who "perform moderately complex tasks that require limited judgment." See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance* (Revised Nov. 2009), at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

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<sup>13</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>14</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.

<sup>15</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).

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 duties of the proffered position 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. 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. While a few related courses may be beneficial in performing certain duties of the proffered 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 a specific specialty, 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. In the instant case, 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. 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").

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 occupations, so long as the employer required all such employees to have baccalaureate or higher degrees in a specific specialty or its equivalent. *See id.* at 388.

The petitioner claims that the proffered position is a new position.<sup>16</sup> In the appeal, the petitioner stated the following:

The person who previously performed many of these duties, but with the title of

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<sup>16</sup> In response to the RFE the petitioner submitted documentation regarding several of its employees. In the denial, the director stated that "the submitted diplomas are for positions other than the proffered position, and thus it cannot be determined that the employer normally requires a degree for the proffered position." The AAO notes that the record of proceeding lacks sufficient information to reasonably conclude that the positions are parallel to the proffered position as the petitioner did not provide details regarding the positions, including the job duties, requirements, etc. Additionally, the employees possess educational credentials in a variety of disciplines. 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.

Director of Studies, and continues to work with [the petitioner] but performing other tasks is [REDACTED]. She holds a Baccalaureate in Secondary Education with a major in Sciences and a Master in Administration and Supervision of Educational Institutions.

The petitioner did not indicate the total number of people who have served, or are currently serving, in the position of Director of Studies. Furthermore, no information was provided regarding any employees who may have held the position of Director of Studies prior to, or after, Ms. [REDACTED]. The petitioner failed to provide the job duties and day-to-day responsibilities of the Director of Studies. The petitioner did not state the knowledge and skills required for the position, or provide any information regarding the complexity of the job duties, independent judgment required or the amount of supervision received. In short, the petitioner has not submitted sufficient information regarding the Director of Studies position to make a legitimate comparison between it and the proffered position. Without this pertinent information, the petitioner has not established that the position of Director of Studies is similar or related to the proffered position. Simply going on record without providing adequate supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it 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.

Upon review of the record, the petitioner and counsel do not assert that the nature of the specific duties of the proffered position is specialized and complex. Furthermore, the petitioner did not submit any evidence to indicate 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, the AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position on the LCA at a relatively low-level classification. The petitioner designated the position as a Level 2 position (out of four possible wage-levels), which DOL indicates is appropriate for qualified employees who "perform moderately complex tasks that require limited judgment." As previously discussed, DOL guidance indicates that a Level 3 is designated for an "experienced" employee, and a Level 4 is designated for a "fully competent worker." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and/or complex duties as such a position would likely be classified at a higher-level, requiring a significantly higher prevailing wage. The petitioner has not provided sufficient probative 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.

Upon review of the record, the petitioner has not met its burden of proof to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position failed to satisfy 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. The appeal will be dismissed and the petition denied for this reason.

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

**ORDER:** The appeal will be dismissed. The petition will be denied.