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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services



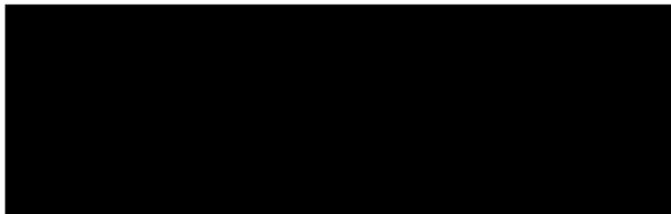
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Date: **JUL 05 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as an interior designer firm with two employees and a gross annual income of \$154,819. In order to employ the beneficiary in what it designates as an interior designer position, the petitioner seeks 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 the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

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

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and [(2)] which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed 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) (hereinafter *Defensor*). 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), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In its March 26, 2010 letter of support filed with the Form I-129, the petitioner's president states that the petitioner is seeking the beneficiary's services as an interior designer. The petitioner states the following regarding duties of the position:

[The beneficiary] is being offered temporary employment in the position of

Interior Designer with an emphasis in Furniture Design. [The beneficiary] will use her knowledge background and experience to work as an interior designer and product designer for our company in designing the interiors & space planning, developing and producing furniture products, creating 3D hand and computer renderings, and designing crystal awards for the company.

As part of the duties, the Interior Designer will be meeting with clients to determine their needs and preferences, along with the purpose and function of the space; upon which a site measurement will need to be conducted at the construction site. The Interior Designer will also be doing space planning and interior design, in which detailed floor plans, furniture plans, electrical plans, wall elevations, and sections of the spaces will be developed & drawn using AutoCAD software. The Interior Designer will create free hand sketches and/renderings and put together the material & color boards based on the proposed floor plan & elevations to present to the client for approval and select and purchase the furniture, finishes & accessories that will accentuate the space. Based on the client's specifications and taking the ergonomical factors into consideration, she will also design custom-made furniture and develop 2D furniture approval drawings using AutoCAD software; producing 3D computer renderings of furniture or room settings for presentation as required by the clients. The Interior Designer will also create lease agreement floor plan drawings for Commercial Property Management as well as designing and developing Crystal Glass Awards. Another important duty of the Interior Designer is to handle the communication with clients that speak in Mandarin.

Counsel submitted the following: (1) a copy of the petitioner's Articles of Incorporation; (2) a copy of a standard Statement of Information form that the petitioner filed with the California Secretary of State; (3) a copy of the petitioner's tax registration certificate; (4) a company brochure; (5) a copy of a California Quarterly Wage and Withholding Report; (6) a copy of Form 1120S, U. S. Income Tax Return for an S Corporation; (7) a printout showing the prevailing wage for an interior designer, from the U.S. Department of Labor's (DOL's) *Online Wage Library (OWL)*; (8) a printout of the "Interior Designers" chapter of the 2010-2011 edition of the DOL's *Occupational Outlook Handbook*; (9) a printout from *Kurzban's Immigration Sourcebook*, highlighted in yellow at a citation to an unreported, non-precedential decision, by the AAO's predecessor, the Administrative Appeals Unit (or AAU), which the printout identifies as a decision finding that an interior designer to be a professional position; (10) a copy of the beneficiary's resume; and (11) a copy of diploma from the Art Institute of California-Los Angeles indicating that the beneficiary has been awarded a Bachelor of Science in Interior Design.

On July 21, 2010, the director issued an RFE requesting the petitioner to submit documentation to establish that the proffered position qualifies as a specialty occupation, including, in part, (1) a more detailed description of the proffered position, including the approximate percentage of time spent for each duty the beneficiary will perform; (2) job listings to show that a degree requirement is common to the industry in parallel positions; (3) letters or affidavits from the industry to attest that such firms recruit only degreed individuals in a specific specialty; (4)

evidence of the petitioner's past employment practices; and (5) information about the petitioner's products or services.

In response to the director's RFE, counsel submitted the following: (1) a letter from the petitioner's president stating that its "clients require" a minimum a bachelor's degree in interior design, and that its "high caliber projects are so unique and specialized in nature that many candidates with a BA are not equipped to perform the requirements of the proffered position, let alone individuals with an associate's degree"; (2) a document listing "Job Duties and Responsibilities (including % time spent [on] each task"; (3) printouts from other interior design firms' Internet sites, which, in part, state the educational background of interior designers employed at those firms; (4) a letter and resume from a Ms. [REDACTED], who identifies herself as a person who has obtained "a Bachelor of Science from Interior Design course (sic)" and who has been working for "West Wing Corporation, the General Contractor in Newport Beach since 2008" and (5) a letter and a copy of the related Form I-20 from DeVry University confirming that the beneficiary is a student in good standing.

At the outset, the AAO finds that, as reflected in both the above-quoted description of duties from the petitioner's March 26, 2010 letter of support and also in the list of duties included in the petitioner's response to the RFE, the petitioner describes the duties of the proffered position in terms of generalized functions that appear generic to the interior design occupation in general. As such, the AAO finds that they do not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than interior designer positions which may share those same generalized functions and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The director denied the petition on October 4, 2010. The director found that the evidence of record does not establish that the job offered qualifies as a specialty occupation. The director cited from the *Handbook*, 2010-2111 edition, to state that the *Handbook* does not indicate that all interior design positions require individuals with a bachelor's degree or higher. Further, the director found that the petitioner failed to submit sufficient documentation to show that (1) the degree requirement is common to the industry in parallel positions among similar organizations; (2) the employer normally requires a degree; and (3) the duties are so unique or complex that only an individual with a degree in a specific specialty could perform them.

On appeal, counsel states that the director erred in his decision because, counsel contends, while the *Handbook* may state that persons with associate's degrees may be hired as assistants, the proffered position is not an assistant position. Counsel also claims that the submitted Internet printouts from similar organizations show that most interior designers have a bachelor's degree or higher, and that this claim is further confirmed by Ms. [REDACTED]. Further, counsel states that the director did not consider the letter submitted by the petitioner stating that the duties of the proffered position are unique and complex due to the high-end nature of their projects.

The AAO finds that the director's determination that the petitioner did not establish the proffered position as a specialty occupation was correct. It should be noted that, as previously indicated in

this decision, the AAO bases its decision on its own independent and complete review of the entire record of proceeding, including all of the evidence submitted from the filing of the petition through the submissions on appeal.

The AAO will now address the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

First, the AAO recognizes the aforementioned DOL *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The AAO finds that the duties described by the petitioner reflect the duties of an interior designer as discussed in the *Handbook*. The “Interior Designer” chapter at the 2012-2013 edition of the *Handbook* describes general duties of this occupational group as follows:

- Determine the client’s goals and requirements of the project
- Consider how the space will be used and how people will move through the space
- Sketch preliminary design plans
- Specify materials and furnishings, such as lighting, furniture, wallcoverings, flooring, equipment, and artwork
- Prepare final plans using computer applications
- Create a timeline for the interior design project and estimate project costs
- Oversee installing the design elements
- Visit after the project to ensure that the client is satisfied
- Search for and bid on new projects

See Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-13 Ed., at <http://www.bls.gov/ooh/Arts-and-Design/Interior-designers.htm#tab-2> (accessed June 15, 2012).

Under the section on “How to Become an Interior Designer,” the *Handbook* states that:

A bachelor’s degree is usually required, as are classes in interior design, drawing, and computer-aided design (CAD). A bachelor’s degree in any field is acceptable, and interior design programs are available at the associate’s, bachelor’s, and master’s degree levels.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/home.htm>. The AAO’s references to the *Handbook* are to the 2012 – 2013 edition available online.

See *Handbook*, at <http://www.bls.gov/ooh/Arts-and-Design/Interior-designers.htm#tab-4> (accessed June 15, 2012).

This critical language of the *Handbook* immediately above indicates that interior designers do not constitute an occupational group for which inclusion or entry normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. Because the *Handbook* indicates that working as an interior designer does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as being a specialty occupation.

Counsel submitted a copy of the 2010-2011 edition of the *Handbook's* on "interior designer," and claims that the director erred by concluding that the proffered position is not a specialty occupation based on the *Handbook*. Specifically, counsel states that while the *Handbook* states that only an associate's degree may be needed for entry-level position, the *Handbook* also states that persons with associate degrees may be hired as assistants to interior designers, but the proffered position is not an assistant position. Instead, the petitioner is hiring "a full-fledged interior designer, a position which requires knowledge and experience far beyond that which would be attained with an associate's degree education."

The 2010-2011 edition of the *Handbook* "Training, Other Qualifications, and Advancement" of states the following:

An associate or bachelor's degree is needed for entry-level positions in interior design. Some states require license interior designers.

Education and training: postsecondary education is necessary for entry-level positions in interior design. Training programs are available from professional design schools or from colleges and universities and usually take 2 to 4 years to complete. Graduates of 2-year or 3- year programs are awarded certificates or associate degrees in interior design and normally qualify as assistants to interior designers upon graduation. Graduates with a bachelor's degree usually qualify for a formal design apprenticeship program.

The AAO finds that the 2010-2011 edition of the *Handbook* also does not support the conclusion that a baccalaureate degree in a specific specialty is required for the position of an interior designer. As with the 2012-2013 edition, the 2010-2011 edition of the *Handbook* also does not designate such a credential as necessary for entry into the Interior Designer occupation. Moreover, as the director noted in his decision, it appears that there is no clear standard of how one prepares for a career as an interior designer; instead, the requirements appear to vary depending on the employer. Thus, the *Handbook* does not establish that a bachelor's degree in interior design, or a closely related specialty, is the normal minimum entry requirement for the proffered position.

As already noted, counsel also submitted a copy of a page from the *Kurzban's Immigration Law Sourcebook* that refers to an unpublished decision from 1989 to state that "interior designer" has been defined as a "professional."

In the instant case, the petitioner failed to submit copies of the unpublished decision. Moreover, counsel did not specify how the facts of these cases corroborate his claims in support of the instant petition. As the record of proceeding does not contain any evidence of the unpublished decision, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions, such as the one here referenced, are not similarly binding.

Moreover, it appears that the unpublished decision dealt with membership in the professions, not membership in a specialty occupation. While the terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes the decision mentioned, which, predates the statutory and regulatory provisions that created the H-1B specialty occupation program.

For the reasons discussed above, the AAO finds no persuasive weight in the petitioner's reference to the non-precedent AAO decision as summarized in the *Kurzban's Immigration Law Sourcebook* printout.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As earlier noted, in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner provided Internet printouts from four companies and a letter from Ms. [REDACTED]. However, upon review of the documents, the petitioner fails to establish that similar organizations to the petitioner routinely recruit and hire individuals with bachelor's degrees (or higher) in a specific specialty, in parallel positions.

The petitioner submitted website printouts from four interior design firms. They appear to be in the same industry as the petitioner; however, the AAO notes that 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 petitioner fails to establish that the submitted printouts are for parallel positions in similar organizations in the same industry. While the printouts indicate that the firms are involved in interior design, there is no other information about the firms to conduct legitimate comparison of their scope, revenue, size and staffing. Moreover, while the printouts claim that their employees have bachelor's degrees, there is no documentary evidence to substantiate the claim. Further, it must be noted that even if all of the printouts 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 four printouts with regard to determining the common educational requirements for entry into parallel positions in similar organizations.²

The AAO now turns to the letter submitted by Ms. [REDACTED]. For a number of reasons, the AAO accords no probative weight to the letter.

First, the evidence of record does not establish Ms. [REDACTED] as an expert in the area for which her letter was submitted. Ms. [REDACTED] states that she graduated from the Art Institute of California-Los Angeles, but does not indicate when she graduated. She further indicates that she works for West Wing Corporation, but its reputation or prominence in interior design industry is unknown. More importantly, it is not evident in Ms. [REDACTED] letter or anywhere else in the record of proceeding that whatever experience she may have had is relevant to, or equipped her with expert-level knowledge regarding, the recruiting, hiring, and educational requirements for the type

² According to the *Handbook's* detailed statistics on accountants, there were approximately 56,500 persons employed as interior designers in 2010. *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Arts-and-Design/Interior-designers.htm#tab-1> (last accessed June 15, 2012). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from four printouts with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the industry. 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 a degree requirement in a specific specialty was common to the industry for the position of accountants (or parallel positions) among organizations 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 require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

of position upon which she is opining. She states that her general tasks are "consulting clients, designing, researching materials, creating construction documents, communicating with cities to obtain permits, managing construction, and managing project accounts, etc." In addition, she does "sketches, computer renderings, material boards, organize materials, research/purchase furniture, etc." It appears that Ms. [REDACTED] is another interior designer, but neither her letter, the accompanying resume, nor any other evidence in the record of proceeding establishes that she has expert knowledge regarding recruiting, hiring, and educational requirements for the position of an interior designer. Therefore, Ms. [REDACTED] has not established that her credentials merit deference to her opinion. Accordingly, the AAO accords no special weight to it, and finds it not persuasive. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The documents provided do not establish that a 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).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Accordingly, the petitioner has not satisfied the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO finds that the petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

As reflected in this decision's earlier comments regarding the generalized and generic nature of the petitioner's descriptions of the proffered position and its duties, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the interior designer duties described constitute a position that requires 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 it. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the particular position. While one or two courses in interior design may be beneficial in performing certain duties of an interior design position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in interior design, is required to perform the duties of the particular position here proffered.

In the instant matter, the petitioner asserts in a letter submitted with the RFE that their projects are of such high caliber that most candidates do not qualify for the position even with a Bachelor's degree in Interior Design. Moreover, the petitioner claims that its clients require "a min[inum] of 10,000 hours experience in their field of expertise and a designer must have a minimum a BA in Interior Design in order to work on our Interior Designer clients projects." However, the petitioner did not submit evidence to substantiate his claim. 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)). Further, the petitioner should note that, although it would be a proper item for consideration, a client's preference for, or even insistence upon, a particular educational background is not in itself determinative of whether, in fact, a proffered position would satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Therefore, the petitioner failed to distinguish the proffered position as unique from or more complex than other interior designer positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The record of proceeding lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than interior designer or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Thus, the petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

Next, the record of proceeding 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. As mentioned, the petitioner claims in the RFE letter that he interviewed 30 plus candidates for the position and states that "even with a BA in Interior Design, the majority of candidates we interviewed were not equipped to handle the requirements of the position due to its unique and specialized nature." However, the petitioner did not submit documentation to support his claim. Again, Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In addition, while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v.*

Meissner, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

For the reason's discussed above, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than those of interior designer positions for which knowledge required to perform the constituent duties is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

As the evidence in the record of proceeding does not satisfy any criterion at 8 C.F.R. §214.2.(h)(4)(iii)(A), the AAO cannot find that the petitioner has established the proffered position as a specialty occupation.

The burden of proof in these proceedings rests solely 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 is dismissed. The petition is denied.