

Information is provided on this document for public use only. It is not to be used for any other purpose.
PUBLIC COPY

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



U.S. Citizenship and Immigration Services



D2

Date: **JUN 08 2012** Office: CALIFORNIA SERVICE CENTER

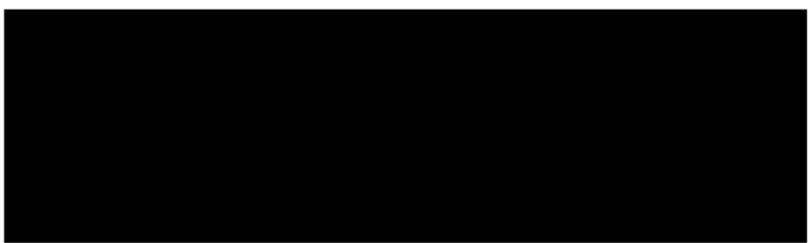


IN RE:



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 with the field office or service center that originally decided your case by filing a 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.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a Montessori school with 36 employees. It seeks to employ the beneficiary as a full-time kindergarten teacher and 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 notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO 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 job 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 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 which [(2)] 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). 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 determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title

of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner submitted, *inter alia*, the following documents with the Form I-129: (1) the petitioner's support letter, dated April 15, 2010; (2) a copy of the beneficiary's "Certificate in Pre-School Education" awarded by The Open University of Sri Lanka; (3) a copy of a certificate indicating the beneficiary's completion of a "Nurses Training Course" held on March 1, 2004 – April 29, 2005, at Vocational Nurses Training Center in Sri Lanka; (4) a copy of a certificate indicating the beneficiary's completion of a "Fundamentals of Baking" course; (5) copies of two of the beneficiary's "Certificate[s] in Diploma in Business Management" awarded by Micom International College of Business and Computer Studies in Sri Lanka; (6) a letter from Long Beach City College dated June 15, 2009, stating that the beneficiary has been enrolled at the college since March 13, 2009; (7) an evaluation of the beneficiary's foreign education and work experience; and (8) a print-out from <http://webschoolpro.com> indicating that the beneficiary has 22 students enrolled in grades K-4.

The petitioner states in its support letter that the beneficiary's job duties will be as follows:

- Teaching basic skills such as color, shape, number and letter recognition, personal hygiene, and social skills;
- Establishing and enforcing rules for behavior, and policies and procedures to maintain order among students;
- Observing and evaluating children's performance, behavior, social development, and physical health;
- Instructing students individually and in groups, adapting teaching methods to meet students' varying needs and interests;
- Reading books to entire classes or to small groups;
- Demonstrating activities to children;
- Providing a variety of materials and resources for children to explore, manipulate, and use, both in learning activities and in imaginative play;
- Planning and conducting activities for a balanced program of instruction, demonstration, and work time that provides students with opportunities to observe, question, and investigate; [and]
- Conferring with parents or guardians, other teachers, counselors, and administrators to resolve students' behavioral and academic problems.

The petitioner also stated the following in its support letter:

[The beneficiary] has the relevant experience we are looking for. [Her] academic and work experience have been evaluated by Sivergate [sic] Evaluations, Inc. to be the equivalent to a U.S. Bachelors' [sic] degree in Education.

On June 10, 2010, the director issued an RFE requesting the petitioner to submit, *inter alia*, the following: (1) a more detailed job description including specific job duties; (2) an explanation of

why the work to be performed requires the services of a person who has a bachelor's degree or its equivalent in the occupational field; and (3) additional evidence to establish that the proffered position qualifies as a specialty occupation under one or more of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)-(4).

On July 22, 2010, in response to the director's RFE, the petitioner, through counsel, submitted the following: (1) a print-out of the Online Wage Library's (OWL) wage survey page for "Kindergarten Teachers, Except Special Education"; (2) a print-out of the O*NET Summary Report for "25-2012.00 – Kindergarten Teachers, Except Special Education"; (3) a print-out of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*) chapter on "Teachers—Kindergarten, Elementary, Middle, and Secondary"; and (4) copies of seven job vacancy announcements.

The petitioner also submitted a letter in which it provided a description of the proffered position, as follows:

- The day starts with circle time. During this time we teach the days of the week and the months of the year. We talk about daily weather and we do the promise and the pledge. 10 %[;]
- We also have a values curriculum that we follow every day. We teach values through out the day, some of the subjects for values are sharing, respect and kindness. These subjects are taught through stories and discussions. 15%[;]
- All children learn how to read and write at their level. We also have a reading program that each child reads out of a binder each day at school and at home. The teacher is responsible for making sure that the child is reading at school and at home. 15%[;]
- Mathematics is also a subject taught on a daily basis. 10%[;]
- Every day of the week we have a theme that we teach the children for example: Monday P.E and Tuesday is Spanish and Wednesday is Science, Thursday is Social Studies and Art and Friday is Dance class. 15%[;]
- Each week the children will explore with a science experiment geared for their age group. 5%[;]
- All the children will learn about [a] different artist each month, they will also have a chance to explore art through free play. 10%[; and]
- The teacher has to make sure that all the lessons plans are made for the month. 20%[;]

The petitioner also stated that the beneficiary is required to hold a bachelor's degree for the proffered position and that the beneficiary will not supervise other employees.

The director denied the petition on July 30, 2010, finding that the proffered position is not a specialty occupation.

On appeal, counsel for the petitioner contends that, according to the *Handbook*, a bachelor's degree is normally the minimum requirement for entry into the occupation of kindergarten

teacher. Counsel further contends that the OWL print-out indicates that the position is in "O*Net job zone 4 with Education and training code 5" and has a Specific Vocational Preparation (SVP) rating of "7.0<8.0 which translates as a bachelor's degree, and indicating that most of these occupations require a four year bachelor's degree." Counsel for the petitioner also contends that the duties are "complex" and that the job vacancy announcements show that other schools require a minimum of a bachelor's degree for kindergarten teacher positions.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The AAO finds that the record evidence most closely reflects the duties of a kindergarten teacher for a private school. The *Handbook* section on "Kindergarten and Elementary School Teachers," states the following:

Kindergarten and elementary school teachers prepare younger students for future schooling by teaching them the basics of subjects such as math and reading.

Duties

Kindergarten and elementary school teachers typically do the following:

- Plan lessons that teach students subjects, such as reading and math, and skills, such as study skills and social skills
- Assess students to evaluate their abilities, strengths, and weaknesses
- Teach students as an entire class or in small groups the lessons they have planned
- Grade students' assignments to monitor their progress
- Communicate with parents about their child's progress

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

- Work with individual students to challenge them and overcome their weaknesses
- Prepare students for standardized tests required by the state
- Develop and enforce classroom rules to teach children proper behavior
- Supervise children outside of the classroom—for example, at lunchtime or during recess

Kindergarten and elementary school teachers act as facilitators or coaches to help students learn and apply important concepts. Many teachers use a hands-on approach, including props, to help students understand abstract concepts, solve problems, and develop critical thinking skills.

For example, they may show students how to do a science experiment and then have the students do the experiment. They may have students work together to learn how to collaborate to solve problems.

Kindergarten and elementary school teachers generally teach kindergarten through fourth or fifth grade. However, in some schools elementary school teachers may teach sixth, seventh, and eighth grade.

Kindergarten and elementary school teachers most often teach students many subjects, such as reading, science, and social studies, which students learn throughout the day.

Some teachers, particularly those who teach young students, may teach a multilevel class that includes children who would traditionally be in different grades. They may have the same group of students for several years.

Kindergarten and elementary school students spend most of their day in one classroom. Teachers may escort students to assemblies; to classes taught by other teachers, such as art or music; or to recess. While students are away from the classroom, teachers plan lessons, grade assignments, or meet with other teachers and staff.

In some schools with older students, teachers work in teams. These teachers often specialize in teaching one of two pairs of specialties, either English and social studies or math and science. Generally, students spend half their time with one teacher and half their time with the other.

Some kindergarten and elementary school teachers teach special classes, such as art, music, and physical education.

Some schools employ teachers of English as a second language (ESL) or English for speakers of other languages (ESOL). Both of these types of teachers work exclusively with students who are learning English, often referred to as English language learners (ELLs). The teachers work with students individually or in

groups to help them improve their English skills and to help them with assignments they got in other classes.

Students with learning disabilities or emotional or behavioral disorders are often taught in traditional classes. Teachers work with special education teachers to adapt lessons to these students' needs and monitor the students' progress. In some cases, kindergarten and elementary school teachers may co-teach lessons with special education teachers. For more information, see the profile on special education teachers.

Some teachers maintain websites to communicate with parents about students' assignments, upcoming events, and grades. For students in higher grades, teachers may create websites or discussion boards to present information or to expand on a lesson taught in class.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Kindergarten and Elementary School Teachers," <http://www.bls.gov/ooh/Education-Training-and-Library/Kindergarten-and-elementary-school-teachers.htm#tab-2> (last visited May 23, 2012).

While the *Handbook* notes that all 50 States require public kindergarten and elementary school teachers to have at least a bachelor's degree in elementary education, it also notes that private school teachers do not need to meet state requirements. The *Handbook* also states that private schools "typically seek kindergarten and elementary school teachers who have a bachelor's degree in elementary education." *Id.* at <http://www.bls.gov/ooh/Education-Training-and-Library/Kindergarten-and-elementary-school-teachers.htm#tab-4>.

That the *Handbook* does not indicate that private kindergarten teacher positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "How to Become a Kindergarten Teacher or Elementary School Teacher" section of its chapter "Kindergarten Teachers and Elementary School Teachers," which does not specify a requirement of a bachelor's degree in a particular major or academic concentration for private school kindergarten teachers:

Kindergarten and elementary school teachers must have a bachelor's degree. In addition, public school teachers must have a state-issued certification or license. For information about teacher preparation programs and certification requirements in your state, contact the U.S. Department of Education.

Education

All states require public kindergarten and elementary school teachers to have at least a bachelor's degree in elementary education. Some states also require kindergarten and elementary school teachers to major in a content area, such as math or science. Those who major in a content area typically enroll in their

university's teacher preparation program and also take classes in education and child psychology.

In teacher education programs, future teachers learn how to present information to young students and how to work with young students of varying abilities and backgrounds. Programs typically include fieldwork, such as student teaching.

Some states require kindergarten and elementary school teachers to earn a master's degree after receiving their teaching certification.

Teachers in private schools do not need to meet state requirements. However, private schools typically seek kindergarten and elementary school teachers who have a bachelor's degree in elementary education.

Licenses and Certification

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification. Those who teach in private schools are generally not required to be licensed.

Kindergarten and elementary school teachers are typically certified to teach early childhood grades, which are usually preschool through third grade, or elementary school grades, which are usually first through sixth grades or first through eighth grades.

Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, typically gained through student teaching. Some states require a minimum grade point average. States often require candidates to pass a general teaching certification test, as well as a test that demonstrates their knowledge of the subject they will teach. Although kindergarten and elementary school teachers typically do not teach only a single subject, they may still be required to pass a content area test to earn their certification.

Teachers are frequently required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification.

Some alternative certification programs allow candidates to begin teaching immediately after graduation, under the supervision of an experienced teacher.

These programs cover teaching methods and child development. After they complete the program, candidates are awarded full certification.

Other programs require students to take classes in education before they can teach. Students may be awarded a master's degree after completing either of these programs. For information about alternative certification programs, contact the National Center for Alternative Certification.

Advancement

Experienced teachers can advance to be mentors or lead teachers. These teachers often work with less experienced teachers to help them improve their teaching skills.

With additional education or certification, teachers may become school counselors, school librarians, or instructional coordinators. Some become assistant principals or principals, both of which generally require additional education in education administration or leadership. For more information, see the profiles on school and career counselors, librarians, instructional coordinators, and elementary, middle, and high school principals.

Important Qualities

Communication skills. Teachers must collaborate with teacher assistants and special education teachers. In addition, they need to discuss students' needs with parents and administrators.

Creativity. Kindergarten and elementary school teachers must plan lessons that engage young students, adapting the lessons to every student's learning style.

Instructional skills. Kindergarten and elementary school teachers need to be able to explain difficult concepts in terms that young students can understand. In addition, they must be able to get students engaged in learning and adapt their lessons to each student's needs.

Patience. Working with students of different abilities and backgrounds can be difficult. Kindergarten and elementary school teachers must respond [and] be patient when students struggle with material.

Id. As indicated above, while private schools may typically seek kindergarten teachers with a bachelor's degree in elementary education, such a specialty degree is not required for entry into this particular occupation. Because the *Handbook* indicates that entry into the private school kindergarten teaching occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for

which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide entry 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 schools 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. Finally, as briefly addressed above and for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of seven advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions.² The advertisements provided, however, do not establish that at least a

² Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just seven job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar schools. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of kindergarten teacher at a private school required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the 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.

bachelor's degree or the equivalent in a specific specialty is required.

For instance, the first two advertisements are for positions in charter schools which are public schools operated independently of the local school board. Thus, they cannot be found to be parallel positions in similar organizations. The third advertisement is for a position teaching kindergarten that requires the candidate to hold a state teaching certificate and meet all state licensing requirements. Thus, it, too, cannot be found to be a parallel position in a similar organization. The fourth advertisement is for a pre-kindergarten teacher position and states that a "Bachelor's Degree in Early Childhood Education or relevant field preferred," thus, it cannot be found to require a degree in a specific specialty or to be a parallel position in a similar organization. The fifth advertisement which states a minimum requirement of a "BA Degree w/ Master Teacher Permit," does not require at least a bachelor's degree in a specific specialty. The sixth advertisement states only that a "BA or Foreign Eq. in Education" is a "plus." Thus, it, too, does not require at least a bachelor's degree in a specific specialty.

Finally, the seventh advertisement for preschool/kindergarten teachers at a Montessori school in Maryland states the following requirement, "A B.A. or B.S. in a related field (Education, Psychology, Early Childhood Development)." In general, 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 two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty."³ Section 214(i)(1)(b) (emphasis added).

This advertisement, however, permits a Bachelor of Arts or Bachelor of Science in related fields and does not limit it to closely related fields. For example, education and psychology, while related, are not closely related fields such that they would delineate essentially the same body of highly specialized knowledge. Therefore, that the educational requirement of the advertised position may also be satisfied by a degree in psychology demonstrates that the advertised position does not require a degree in a single specific specialty. Regardless, even if psychology had been demonstrated to be or were otherwise deemed to be a field closely related to education, this single job posting as compared to three advertisements not requiring a specialty degree would indicate that such a specialty degree is not required. Consequently, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied 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

³ 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.

so complex or unique that it can be performed only by an individual with a degree.” The petitioner and counsel claim that the duties of the proffered position are complex. However, the record does not demonstrate any complex or unique nature of the proffered position that distinguishes it from similar but non-specialty degreed employment under the second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor’s degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the kindergarten teaching duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While some education courses may be beneficial in performing certain duties of a kindergarten teacher, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate degree in a specific specialty, or its equivalent are required to perform the duties of the particular position here proffered. Consequently, as the petitioner fails to demonstrate how the proffered position of kindergarten teacher is so complex or unique relative to other private school kindergarten teacher 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).

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. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁴

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

⁴ 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").

to show that they are more specialized and complex than kindergarten teacher positions that are not usually associated with a degree in a specific specialty.⁵

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.

The AAO will now discuss O*NET's SVP rating of "7.0<8.0" for the occupation of "Kindergarten Teachers, Except Special Education." The AAO finds that an assignment of an SVP rating of 7.0 to 8.0 is not indicative of a specialty occupation. This is obvious upon reading Section II of the DOT's Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.⁶ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

⁵ Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other kindergarten teacher positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

⁶ The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (last visited May 23, 2012).

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7 through 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the SVP information is not probative of the proffered position being a specialty occupation.

Furthermore, a designation of Job Zone 4 indicates that a position requires "considerable preparation." It does not, however, demonstrate that at least a bachelor's degree in any specific specialty or its equivalent is required, and does not, therefore, demonstrate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones> (confirming that Job Zone 4 does not indicate any requirements for degrees in specific specialties) (last visited May 23, 2012).

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. However, the AAO notes that in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, as the claimed equivalency was based in part on experience, there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1).

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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