



U.S. Citizenship  
and Immigration  
Services

U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**PUBLIC COPY**

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Date: **JUN 12 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:

SELF-REPRESENTED

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 before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on September 1, 2010. The petitioner stated that it is a law firm with 12 employees.

Seeking to employ the beneficiary in what it designates as a legal interpreter 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 October 14, 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. On appeal, the petitioner asserts that the director's basis for the denial was erroneous and contends that it 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 request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) 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.

Later in this decision, the AAO will also address an additional, independent ground, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit a Labor Condition Application (LCA) that corresponds to the petition. For this additional reason, the petition may not be approved, it is considered as an independent and alternative basis for denial.<sup>1</sup>

In this matter, the petitioner stated on the Form I-129 and supporting documentation that it seeks the beneficiary's services as a legal interpreter on a full-time basis at a salary of \$30,000 per year. In response to an RFE, the petitioner stated that the beneficiary would be employed to perform the following duties:

- Translate legal documents from Chinese to English and vice versa, resolve conflicts related to meanings of words, terminologies and legal concepts, and

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

ensure the translations remain consistent. Legal documents needed to be translated include comprehensive business contracts and loan agreements for business related visa cases. Documents also include complex publications and journals for [the petitioner's] extraordinary ability clients. (60% of the time);

- Perform simultaneous interpretation duties at legal proceedings, INS [i]nterviews and client-attorney meetings covering statements, contracts, declarations, credentials and any other legal documents in Chinese[.] (20 % of the time);
- Comprehend legal terms and statements in written Chinese materials, and rewrite or certify such legal documents in English in a way accurately reflecting the Chinese contexts of the documents[.] (10% of the time); and
- Assist attorney in proofreading, editing and revising translated documents before submission to the Services, Consulates or relevant authorities[.] (10% of the time).

The petitioner stated that "[a]s part of our ongoing hiring policy, we require the candidates for the position of legal interpreter/translator possess [a] minimum of a bachelor degree in English Language and Literature, Translation & Interpretation, Business Administration or Law."

The AAO notes that the petitioner's requirement of a bachelor's degree in "English Language and Literature, Translation & Interpretation, Business Administration or Law" does not denote a requirement in a specific specialty. 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 disparate fields, such as "English Language and Literature, Translation & Interpretation, Business Administration or Law", would not meet the statutory requirement that the degree be "in *the* specific specialty." See 214(i)(1)(b) of the Act (emphasis added).

Here, although the petitioner claims that a bachelor's degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for the position. In addition to recognizing degrees in disparate fields as acceptable for the proffered position, the petitioner also states that a degree in business administration is acceptable. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Therefore, the petitioner's statement that a general, non-specialty degree in business administration is sufficient for the position strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this

occupation. The petitioner has indicated that at least a bachelor's degree in a specific specialty or its equivalent is not required for the position. Accordingly, the petition does not support the claim that the proffered position is a specialty occupation.

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 October 14, 2010. The petitioner submitted an appeal of the denial of the H-1B petition.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. The AAO will first make some preliminary findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.

More specifically, the AAO will now highlight an aspect of the petition that undermines the petitioner's credibility with regard to the actual nature and requirements of the proffered position. This particular aspect is the discrepancy between what the petitioner claims about the level of responsibility inherent in the proffered position, on the one hand, and, on the other, the contrary level of responsibility conveyed by the wage level indicated by the LCA submitted in support of the petition.

The petitioner repeatedly claims that the duties of the proffered position are complex, unique and/or specialized. Throughout the record the petitioner asserts that the nature of the position is complex and that "the position offered involves complex interpretation/translation duties." The petitioner claims that the beneficiary will be required to perform "simultaneous or consecutive [sic] interpretation" at legal proceedings, interviews and meetings. The petitioner asserts that the proffered position requires the beneficiary to translate complex documents, publications and journals as well as highly scientific publications. The petitioner claims that translating for law firms is "one of the most challenging forms of language interpretation due to the complex nature of the concepts that must be translated." The petitioner further states that "[i]n addition to the complexity of the materials to be translated" the beneficiary must demonstrate "precision and accuracy" in the translations. Moreover, the petitioner submitted samples of documents to demonstrate the "complexity" of the proffered position.

In this regard, the petitioner's assertions are questionable when reviewed in connection with the LCA submitted with the Form I-129 petition. The AAO notes that the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Interpreters and Translators" - SOC (ONET/OES Code) 27-3091, at a Level 1 (entry level) wage.

Wage levels should be determined only after selecting the most relevant *O\*NET* occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the

occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.<sup>2</sup> Prevailing wage determinations start with an entry level wage 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>3</sup> The U.S. Department of Labor (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.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.<sup>4</sup> A Level 1 wage rate is described by DOL as follows:

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

The petitioner repeatedly claims that the duties of the proffered position are complex, unique and/or specialized. However, the AAO must question the level of complexity, independent judgment and understanding required for the position as the LCA is certified for a Level 1 entry-level position. The LCA's wage level indicates the position is actually a low-level, entry

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<sup>2</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>3</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>4</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).

position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands and level of responsibilities of the proffered position. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

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

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

[Italics added]. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties of the proffered position, that is, specifically, that corresponds to the level of work and responsibilities that the petitioner

ascribed to the proffered position and to the wage-level corresponding to such a level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations. For this reason also, the petition may not be approved.

It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into each basis discussed below for dismissing the appeal.

Next, the AAO will address the issue of whether the petitioner established that the proffered position is a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described 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 (5<sup>th</sup> 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 as a legal interpreter. 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>5</sup> The section of the *Handbook* most relevant to this proceeding is the chapter "Interpreters and Translators."<sup>6</sup> However, upon review of the chapter, it must be noted that the *Handbook* does not indicate that "Interpreters and Translators" comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty. As previously discussed, USCIS consistently interprets the term "degree" to mean not just any baccalaureate or higher degree, but one in a *specific specialty* that is directly related to the position.

The *Handbook* provides the following information regarding the education for this occupational category:<sup>7</sup>

The educational backgrounds of interpreters and translators vary, but it is essential that they be fluent in English and at least one other language.

High school students interested in becoming an interpreter or translator should take a broad range of courses that includes English writing and comprehension, foreign languages, and computer proficiency. Other helpful pursuits for prospective foreign-language interpreters and translators include spending time abroad, engaging in direct contact with foreign cultures, and reading extensively on a variety of subjects in English and at least one other language. Through community organizations, students interested in sign language interpreting may

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<sup>5</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>6</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Interpreters and Translators, on the Internet at <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm> (visited May 30, 2012).

<sup>7</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 Edition*, Interpreters and Translators, on the Internet at <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-4> (visited May 30, 2012).

take introductory classes in ASL and seek out volunteer opportunities to work with people who are deaf or hard of hearing.

Beyond high school, people interested in becoming an interpreter or translator have many educational options. Although a bachelor's degree is often required for jobs, majoring in a language is not always necessary. An educational background in a particular field of study can provide a natural area of subject-matter expertise.

However, interpreters and translators generally need specialized training on how to do the work. Formal programs in interpreting and translating are available at colleges and universities nationwide and through nonuniversity training programs, conferences, and courses.

Many people who work as conference interpreters or in more technical areas—such as localization, engineering, or finance—have a master's degree. Those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

The AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates that the proffered position is a low-level, entry position relative to others within the occupation. The *Handbook* does not state that a baccalaureate or higher degree or its equivalent, in a specific specialty, is normally the minimum requirement for interpreters and translators. The *Handbook* states that the educational backgrounds of interpreters and translators vary but that it is essential that they be fluent in English and at least one other language. The *Handbook* indicates that the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree. The *Handbook* states that beyond high school, people interested in becoming an interpreter or translator have many educational options.<sup>8</sup> Further, the *Handbook* states that although a bachelor's degree is often required for jobs, the *Handbook* does not conclude that these positions normally require a bachelor's degree, or its equivalent, *in a specific specialty* for entry into the occupation.

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)(I).

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<sup>8</sup> For instance, the definition of "often" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Many times : frequently." It cannot be found, therefore, that a particular degree that is "often" required for positions in a given occupation would equate to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

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. Furthermore, the petitioner did not submit any letters or affidavits from firms or individuals in the industry to meet this criterion of the regulations.

As previously mentioned, the petitioner describes itself as a law firm with 12 employees. For the petitioner to establish that an 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 submitted a printout from the [REDACTED] website regarding "some of the most popular translators in [the] company." The AAO reviewed the [REDACTED] website and observes that the company is based in Hong Kong with offices in Singapore and China.<sup>9</sup> It must first be noted that the AAO is not persuaded that the educational credentials of translators for a company in Asia are relevant to the issue here as the petitioner has not provided any evidence to demonstrate that the company is similar to the petitioner. Furthermore, the [REDACTED] printout does not provide the job duties and day-to-day responsibilities of any of the positions. As a result, the petitioner has not established that the positions are similar or related to the proffered position.<sup>10</sup> The petitioner's submission of a website printout for the

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<sup>9</sup> [REDACTED] website on the Internet at <http://www.timestranslation.com/html/cont/index.htm> (last accessed May 30, 2012).

<sup>10</sup> USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. See *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). However, the AAO will note that it reviewed the printout submitted by the petitioner regarding the qualifications of [REDACTED] translators, and the majority of the translators have degrees in law, followed by a number of translators having degrees in translation – neither of which the beneficiary possesses.

translation company in Asia appears to be extraneous and the petitioner has failed to establish its pertinence here.

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

The AAO notes that all of the postings provided by the petitioner in response to the RFE are devoid of sufficient information regarding the advertising organizations to conduct a legitimate comparison of the business operations. The advertisements appear to be for dissimilar organizations as the employers are the Department of Justice (which indicated that a bachelor's degree was preferred but not required), Advanced Video Communications, and WorldLingo. The petitioner failed to establish that the advertising organizations are similar to the petitioner and, thus, further review of the postings is not necessary.

With the appeal, the petitioner submitted additional job announcements, including the following postings:

- An advertisement for an intellectual property law firm for a technical translator to translate "patent applications and related documents, primarily in the field of electrical and automotive engineering" but also including electronics, telecommunications, computers, chemistry, textile engineering, hydraulics and pneumatics, and medicine. The information about the duties and responsibilities of the advertised position does not support a conclusion that the positions are parallel in their actual performance and knowledge requirements. The advertising employer requires a college degree, preferably in liberal arts, journalism, German, English and/or science. Contrary to the purpose for which the advertisement was submitted, the posting states that a bachelor's degree is required, but does not indicate that a bachelor's degree in a *specific specialty* is required. Rather, the employer will accept a degree in a range of disparate fields, including a degree in a general field such as liberal arts and/or science.
- An advertisement is for a document review/translation project. The posting states that a four-year degree is required but does not specify a field of study. Thus, a bachelor's degree is required, but the advertisement does not indicate that a bachelor's degree in a *specific specialty* is required.

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

It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be

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

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty or its equivalent for organizations that are similar to the petitioner, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The petitioner also submitted a printout from the Atlanta Association of Interpreters and Translations (AAIT) website. The AAO viewed the AAIT website and observes that the AAIT is "a chapter of the American Translators Association (ATA)" and is "a non-profit, professional association serving metropolitan Atlanta and the state of Georgia."<sup>11</sup> The petitioner, which has offices in San Jose, California and San Francisco, California provided no explanation for submitting documentation regarding an association located approximately 2,450 miles away – particularly, when the location of the petitioner's law offices are encompassed by another chapter of the ATA, that is, the Northern California Translators Association.<sup>12</sup>

The documentation submitted by the petitioner from the AAIT website includes information regarding the AAIT's role in the Southeastern region of the United States as well as its recommended accreditation guidelines. The document indicates that translators and interpreters must demonstrate that they have a certificate of competence or at least a bachelor's degree in translation-interpretation as well as meeting additional requirements. The AAO notes that the petitioner has not indicated that it requires its legal interpreters to be accredited by the Atlanta Association of Interpreters and Translations. Upon review of the record, the petitioner has not established the relevancy of the AAIT printout to this proceeding and the AAO finds that it has no probative value.<sup>13</sup>

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<sup>11</sup> Atlanta Association of Interpreters and Translations, *Frequently Asked Questions (FAQS)*, available at <http://www.aait.org/faqs> (last accessed May 30, 2012).

<sup>12</sup> American Translators Association, Chapters and Groups, on the Internet at <http://atanet.org/chaptersandgroups/chapters.php> (last accessed May 30, 2012).

<sup>13</sup> As previously discussed, USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *See Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988). However, the AAO observes that the beneficiary does not possess a degree in translation and/or interpretation (and the petitioner has not demonstrated that the beneficiary possesses a certificate of competence) or meets the other qualifications for AAIT

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).

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.

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

Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates that the position is a low-level, entry position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment. The beneficiary's work will be closely supervised and monitored and she will receive specific instructions on required tasks and expected results. Her work will be reviewed for accuracy. The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty. 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 legal interpreter 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. That is, the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or the equivalent.

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accreditation. Thus, for this reason as well, the petitioner's has not established the relevancy of the AAIT printout to this proceeding.

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 or unique. While a few related courses may be beneficial in performing certain duties of the 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.

Consequently, as the petitioner fails to demonstrate how the proffered position of legal interpreter is so complex or unique relative to other positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

The AAO notes that the petitioner repeatedly claims that the duties of the proffered position can only be employed by a degreed individual. 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").

In response to the RFE, the petitioner provided a "Notice of Filing of the LCA" as evidence that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position. The "Notice of Filing of the LCA" is a statement to the petitioner's workers that it has a job opportunity available, that a foreign worker may be placed in the position and that interested parties may read the notice and provide comments to DOL. Its primary purpose is not intended

to be a form of recruitment. The document, which appears to have been posted in connection with the LCA on behalf of the beneficiary, is not sufficient to establish a 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.

In addition, the petitioner submitted a copy of a job posting it placed on "Craigslis" and an email and a fax indicating that the petitioner provided the job posting to the career services departments at the Monterey Institute of International Studies and California State University East Bay. All of the documents are dated within an approximately ten-day period. Thus, it appears that the documents encompass one period of recruitment. The petitioner did not provide any further documentation regarding its recruitment history for the position of legal interpreter. The job posting indicates that a "Bachelor or higher degree in English, Translation, Business or Law [is] a must."

The petitioner also submitted the resumes and diplomas of two of its current employees, which state that one of the employees possesses a Bachelor of Arts in English and a Master of Arts in Public Administration and the other employee possesses a Bachelor of Laws. The petitioner did not state how many people it has previously employed in the position of legal interpreter but did provide the resumes of two of its former employees. However, the petitioner did not submit copies of their educational credentials. As discussed in the denial, the resumes represent a claim, rather than evidence to support that claim. However, the AAO notes that one of the former employees stated that she possessed a Bachelor of Material Engineering and a Master of Business Administration.

Upon review of the petitioner's job posting and documentation regarding its current and prior employees, the AAO hereby references and reiterates its earlier discussion that for a position to be a specialty occupation, there must be a close correlation between the required specialized studies and the position. The requirement of a degree in disparate fields does not establish the position as a specialty occupation. See § 214(i)(1) of the Act; *cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As previously discussed, a claim by the petitioner that the duties of the position can be performed by an individual with only a general-purpose bachelor's degree (i.e., a degree in business administration) is tantamount to an admission that the proffered position is not in fact a specialty occupation. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

To satisfy this criterion of the regulatory provision, 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. *See id.* at 388.

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.

The AAO again incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position on the LCA as a low-level, entry position relative to others within the occupation. Therefore, it is simply not credible that the position is one with specialized and complex duties as such a position would be classified at a higher-level, requiring a significantly higher prevailing wage. The petitioner has not provided sufficient documentary evidence to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

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. Thus, the appeal will be dismissed and the petition denied for this reason also.

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.

It must be noted that an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify

all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, aff'd. 345 F.3d 683.

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.