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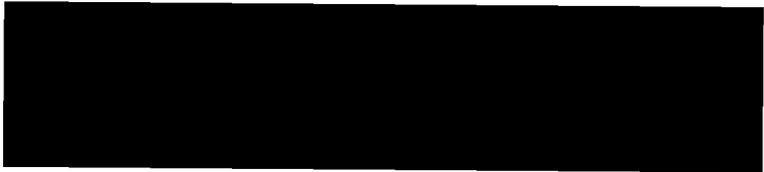
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

D2



Date: **MAR 29 2012** Office: CALIFORNIA SERVICE CENTER

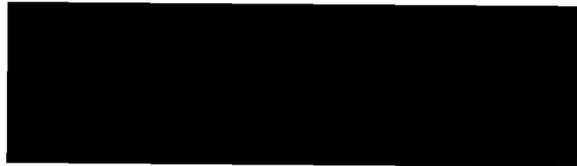
FILE:

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 petitioner simultaneously filed a combined motion to reopen and motion to reconsider, as well as an appeal on April 14, 2010. The director dismissed the motion on May 10, 2010. The appeal is now before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner claims to be an animal protection and rescue nonprofit organization established in 2003. It seeks to continue to employ the beneficiary as a technical writer on a part-time basis 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 [(2)] which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). 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.

In the petition signed on November 16, 2009, the petitioner claimed to have nine employees and a gross annual income of \$300,000. The petitioner indicated that it wishes to employ the

beneficiary as a technical writer for 30 hours per week.¹

In the petitioner's support letter dated November 11, 2009, the petitioner states that the beneficiary will work as a technical writer. As stated by the petitioner, the proffered position's duties would require the beneficiary to be responsible for:

- Preparing educational material, brochures, write-ups, articles and publications relating to prevention of animal cruelty to be used in publicity campaigns and the [petitioner's] website; *30% of time*
- Utilizing business and marketing terminology, language, principles and techniques to disseminate knowledge for the public to thoroughly understand the content and intent of the [petitioner's] mission and agenda; *20% of time*
- Reading and rewriting material for educational outreach and fundraising events, editing for elements such as word meanings, sentence structure, grammar, punctuation and mechanics; *20% of time*
- Developing, writing, and editing material for public release and advertisement campaigns; *10% of time*
- Reviewing internet and marketing material and other organizations' and industry's [sic] material and data to create brochures, web content, information and material for dissemination to the public of the [petitioner's] mission and agenda; *10% of time [and]*
- Analyzing and reviewing published materials and recommending revisions or changes in scope, format, and methods of reproduction; [sic] *10% of time*

The petitioner does not indicate that the minimum education requirement for the position is a bachelor's degree *in a specific specialty* or its equivalent. The petitioner only indicates that a baccalaureate or higher degree is normally the minimum requirement for the proffered position. The petitioner further states that the *Dictionary of Occupational Titles* (hereinafter the *DOT*) lists technical writer as SVP 8 and, therefore, the proffered position qualifies as being an occupation

¹ It must be noted for the record that the Form I-129, the Labor Condition Application, the petitioner's support letter, and counsel's letter all indicate that the beneficiary will be compensated at the rate of \$25 per hour for 30 hours per week, which equates to \$39,000 per year. However, the Form I-129 H-1B Data Collection Supplement indicates that the beneficiary's rate of pay is \$35,000 per year, which is the rate of pay for 30 hours per week of work at \$22.43 per hour. In addition, the petitioner's position job announcement submitted in response to the director's RFE indicates that the petitioner requires a full-time, not a part-time, technical writer and its rate of pay will start at \$30,000 per year. 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).

requiring, at a minimum, a bachelor's degree. In addition, the petitioner states that the beneficiary earned a bachelor's degree in linguistics from the University of Poznan in Poland. The petitioner submitted a copy of the beneficiary's foreign degree and transcripts, as well as a credential evaluation from [REDACTED] finding that the beneficiary's foreign education is equivalent to a U.S. bachelor's degree in Polish.

On January 14, 2010, the director issued an RFE requesting the petitioner to submit, *inter alia*, (1) a more detailed job description, including specific job duties, percentage of time spent on each duty, level of responsibility, hours per week of work and the minimum education, training and experience necessary; (2) evidence that the proffered position is a common position required by similar sized organizations with similar annual incomes; (3) evidence to establish a degree requirement is common to the industry in parallel positions among similar organizations such as job listings or advertisements; (4) documentation to show that an industry-related professional association has made a bachelor's degree in a specific specialty a requirement for entry into the field; (5) letters or affidavits from firms or individuals in the industry that attest that such firms routinely employ and recruit only degreed individuals in a specific specialty; (6) copies of the petitioner's present and past job vacancy announcements; (7) in layman's terms, a clear explanation of what differentiates the proffered position from other related "non-specialty occupation" positions; (8) a line and block organizational chart describing its managerial hierarchy and staffing levels; and (9) a list of all employees including names, job titles, and social security numbers, beginning date of employment, and wages per week.

On February 25, 2010, in response to the director's RFE, counsel for the petitioner submitted, in part, (1) the same job description from the petitioner's support letter dated November 11, 2009; (2) a copy of *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm'r 1988), *Matter of Desai*, 17 I&N Dec. 569 (Reg. Comm'r 1980), and *In re: X*, File: WAC 93 195 51903, Western Service Center (PHO) (AAU Nov. 8, 1993); (3) a copy of the petitioner's job vacancy announcement for the proffered position; (4) job vacancy announcements from other companies; (5) two letters from nonprofit organizations; (6) a line and block organizational chart; and (7) a list of all employees.

The director denied the petition on March 16, 2010.

On appeal, counsel claims that the petitioner did establish that the proffered position is a specialty occupation. Counsel further claims that the proffered position goes beyond an author position, as classified by the director, "because the technical writer must translate the organization's technical information for the company's purposes and must be able to effectively communicate this information to its audience to convey their message to members of non-governmental and governmental organizations." In addition, counsel states that the petition is an extension of an approved Form I-129 with the same petitioner, beneficiary, position, duties, and location and, therefore, the petition should have been approved. Counsel includes an advisory opinion letter report from [REDACTED] and a copy of AAO Decision, WAC 98 141 50449 (Aug. 28, 2001).

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 U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter 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)).

As a preliminary matter, the AAO will address the case law cited by counsel in response to the RFE and on appeal. With regard to *Matter of Caron International, Inc.*, 19 I&N Dec. 791, this matter is irrelevant to the instant petition as it addresses whether the beneficiary is a member of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and 8 C.F.R. § 204.5(k)(2). As indicated earlier, the issue before the AAO is whether the petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession. Thus, the matter cited by counsel is irrelevant to the instant petition.²

With regard to *Matter of Desai* 17 I&N Dec. 569, the facts in this decision are not analogous to the instant petition. Specifically, the matter cited pertains to an immigrant visa petition and whether the beneficiary is a member of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and 8 C.F.R. § 204.5(k)(2). Again, the issue before the AAO is whether the petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation as that term is defined at section 214(i)(1) of the Act and not whether it is a profession. Thus, this matter cited by counsel is also irrelevant to the instant petition.

In addition, the facts in *In re: X*, File: WAC 93 195 51903, Western Service Center (PHO) (AAU Nov. 8, 1993) and AAO Decision, WAC 98 141 50449 (Aug. 28, 2001) are also not analogous to the instant petition. For instance, in *In re: X*, the petitioner was a company with 150 employees and a gross annual income of \$29 million that exported agricultural products to Latin America. In the AAO Decision WAC98 141 50449, the petitioner was a micro electronics firm with 530 employees and a gross annual income of \$45 million. In addition, a key difference in these matters was that the proffered positions were a combination of technical writer and translator duties. Regardless, even if the facts of these cases were analogous to those in this matter, they

² The AAO notes that the primary, fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree, or its equivalent, to be in a specific specialty. Thus, while counsel claims that the position of technical writer is specifically identified as qualifying as a profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

are unpublished decisions and, as such, are not binding on the AAO. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In addition, as a preliminary matter, the AAO finds that the *DOT* does not support the assertion that assignment of an SVP rating of 8 is 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 Specialized Vocational Preparation (SVP) rating system.³ 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.

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
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³ The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

- 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 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 *DOT* information is not probative of the proffered position being a specialty occupation.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ The duties, as described, do not reflect the employment of technical writers whose work is discussed in the 2010-2011 edition of the *Handbook* under the occupation of technical writers, as follows:

Technical writers, also called *technical communicators*, put technical information into easily understandable language. They work primarily in information-technology-related industries, coordinating the development and dissemination of technical content for a variety of users; however, a growing number of technical communicators are using technical content to resolve business communications problems in a diversifying number of industries. Included in their products are operating instructions, how-to manuals, assembly instructions, and other documentation needed for online help and by technical support staff, consumers, and other users within the company or industry. Technical writers also develop documentation for computer programs and set up communications systems with consumers to assess customer satisfaction and quality control matters. In addition, they commonly work in engineering, scientific, healthcare, and other areas in which highly specialized material needs to be explained to a diverse audience, often of laypersons.

Technical writers often work with engineers, scientists, computer specialists, and software developers to manage the flow of information among project workgroups during development and testing. They also may work with

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

product liability specialists and customer service or call center managers to improve the quality of product support and end-user assistance. Technical writers also oversee the preparation of illustrations, photographs, diagrams, and charts. Technical writers increasingly are using a variety of multimedia formats to convey information in such a way that complex concepts can be understood easily by users of the information.

Applying their knowledge of the user of the product, technical writers may serve as part of a team conducting usability studies to help improve the design of a product that is in the prototype stage. Technical writers may conduct research on their topics through personal observation, library and Internet research, and discussions with technical specialists. They also are expected to demonstrate their understanding of the subject matter and establish their credibility with their colleagues.

Technical writers use computers and other electronic communications equipment extensively in performing their work. They also work regularly with desktop and other electronic publishing software and prepare material directly for the Internet. Technical writers may work with graphic design, page layout, and multimedia software; increasingly, they are preparing documents by using the interactive technologies of the Web to blend text, graphics, multidimensional images, and sound.

Some technical writers work on a freelance or contract basis. They either are self-employed or work for a technical consulting firm and may be hired to complete specific short-term or recurring assignments, such as writing about a new product or coordinating the work and communications of different units to keep a project on track. Whether a project is to be coordinated among an organization's departments or among autonomous companies, technical writers ensure that the different entities share information and mediate differences in favor of the end user in order to bring a product to market sooner.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Technical Writers," <http://www.bls.gov/oco/ocos319.htm> (accessed March 21, 2012).

Instead, the AAO finds most of the duties of the proffered position, which are largely focused on writing and editing for various multimedia formats, to principally reflect the work performed by authors, writers, and editors. As indicated by the *Handbook*:

Authors, writers and editors produce a wide variety of written materials in an increasing number of ways. They develop content using any number of multimedia formats that can be read, listened to, or viewed onscreen. Although many people write as part of their primary job, or on online chats or blogs, only writers and editors who are paid to primarily write or edit are included in this occupation. (News analysts, reporters, and correspondents,

who gather information and prepare stories about newsworthy events, and technical writers, who help explain highly technical information to less technical audiences, are described elsewhere in the *Handbook*.)

Writers and authors develop original written materials for books, magazines, trade journals, online publications, company newsletters, and advertisements. . .

Copy writers prepare advertising copy for use in publications or for broadcasting and they write other materials to promote the sale of a good or service. They often must work with the client to produce advertising themes or slogans and may be involved in the marketing of the product or service.

All writers conduct research on their topics, which they gather through personal observation, library and Internet research, and interviews. . . . Writers, especially of nonfiction, are expected to establish their credibility with editors and readers through strong research and the use of appropriate sources and citations. Writers and authors then select the material they want to use, organize it, and use the written word to express story lines, ideas, or to convey information. With help from editors, they may revise or rewrite sections, searching for the best organization or the right phrasing.

Most writers and editors use desktop or electronic publishing software, scanners, and other electronic communications equipment in the production of their material. In addition, because many writers today prepare material directly for the Internet, such as online newspapers and text for video games, they should be knowledgeable about graphic design, page layout, and multimedia software. In addition, they should be familiar with interactive technologies of the Web so that they can blend text, graphics, and sound together. Some writers maintain blogs or issue text messages as a way of keeping in touch with readers or providing information to them quickly, but only those who are paid to write their blogs or send text messages may be considered writers.

* * *

Editors review, rewrite, and edit the work of writers. They also may do original writing. An editor's responsibilities vary with the employer and type and level of editorial position held. Editorial duties may include planning the content of books, journals, magazines, and other general-interest publications. Editors also review story ideas proposed by staff and freelance writers then decide what material will appeal to readers. They review and edit drafts of books and articles, offer comments to improve the work, and suggest possible titles. In addition, they may oversee the production of publications. In the book-publishing industry, an editor's primary responsibility is to review

proposals for books and decide whether to buy the publication rights from the author.

* * *

In smaller organizations—such as small daily or weekly newspapers—a single editor may do everything or share responsibility with only a few other people. . . . *Copy editors* review copy for errors in grammar, punctuation, and spelling and check the copy for readability, style, and agreement with editorial policy. They suggest revisions, such as changing words and rearranging sentences and paragraphs, to improve clarity or accuracy. They may also carry out research and confirm sources for writers and verify facts, dates, and statistics. In addition, they may arrange page layouts of articles, photographs, and advertising; compose headlines; and prepare copy for printing.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., “Authors, Writers and Editors,” <http://www.bls.gov/oco/ocos320.htm> (accessed March 21, 2012).

The AAO now turns to the *Handbook's* discussion of the educational requirements for authors, writers, and editors to determine whether the proffered position would impose a specific degree requirement on the beneficiary in order to perform its duties. While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for author, writer, and editor jobs, it does not indicate that the degrees held by such workers must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation. *See id.* This is evident in the “Training, Other Qualifications, and Advancement” section of the *Handbook's* chapter on “Writers, Authors, and Editors,” which does not specify a particular major or academic concentration:

A college degree generally is required for a position as an author, writer, or editor. Good facility with computers and communications equipment is necessary in order to stay in touch with sources, editors, and other writers while working on assignments, whether from home, an office, or while traveling.

Education and training. A bachelor's degree or higher is typically needed for a job as an author, writer, or editor. Because writing skills are essential in this occupation, many employers like to hire people with degrees in communications, journalism, or English, but those with other backgrounds and who can demonstrate good writing skills may also find jobs as writers. Writers who want to focus on writing about a particular topic may need formal training or experience related to that topic. For example, textbook writers and fashion editors may need expertise in their subject areas that they acquired either through formal academic training or work experience. The Internet and other media allow some people to gain writing experience through blog posts, text messages, or self-publishing software. Some of this

writing may lead to paid assignments based upon the quality of the writing, unique perspective, or the size of the potential audience, without regard to the absence of a degree.

Id. As stated above, “those with other backgrounds and who can demonstrate good writing skills may also find jobs as writers.” *Id.* Because the *Handbook* indicates that entry into writer, author, and editor occupations do not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation. Further, there is nothing in the evidence of record that otherwise establishes that the duties described for the proffered position would require the application of at least a bachelor’s degree level of highly specialized knowledge in any specialty.

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 requirement for at least a bachelor's degree in a specific specialty or its equivalent. The petitioner in this case does not even specify the specialty in which the degree would allegedly be required. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, or liberal arts, 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).

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, in response to the RFE, two letters from other nonprofit organizations. The letters provided only indicate that a bachelor's degree is generally required. The letters do not indicate that at a minimum a bachelor's degree or the equivalent in a *specific specialty* is required for the proffered position. Thus, petitioner has not established that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

The petitioner also submitted copies of nine advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in nonprofit organizations. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, all the advertisements are for positions in different industries and dissimilar organizations and, thus, they cannot be found to be parallel positions. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁵

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." To begin with and as discussed previously, the petitioner itself does not require at least a baccalaureate

⁵ 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 nine job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar nonprofit 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 of "technical writer" for a nine-person nonprofit organization 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 statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

degree in a specific specialty or its equivalent. Furthermore, the *Handbook* reveals that the proffered duties are performed by authors, writers, and editors, positions which do not require a bachelor's degree in a specific specialty for entry into those occupations.

The petitioner states in its support letter dated November 11, 2009 that its policy is to employ only technical writers who hold a bachelor's degree or higher. In addition, in response to the RFE, the petitioner submits a list of its employees, which indicates that 11 of its employees have a bachelor's or higher degree. However, the petitioner did not submit copies of its employees post-secondary degrees to demonstrate that they do in fact possess a bachelor's or higher degree in a specific specialty or its equivalent. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.⁶

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. The *Handbook* describes the duties of the proffered position as analogous to that of an author, writer, and editor, occupations that do not require a bachelor's degree in a specific specialty. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).⁷

⁶ 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").

⁷ Counsel indicates on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other author, writer, and editor positions for which, according to the *Handbook*, a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover and as noted above, 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 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 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. Therefore, the AAO need not and will not address the beneficiary's qualifications except to note that, if the proffered position did require a bachelor's or higher degree in a specific specialty closely related to its duties, it is unclear how the beneficiary's U.S. equivalent bachelor's degree in Polish would qualify her to perform its duties.

Finally, the petitioner emphasizes on appeal that the proffered position is the same position in job title and duties as the previously approved H-1B petition filed by the petitioner on behalf of the beneficiary. Counsel also references an April 23, 2004 memorandum authored by [REDACTED] (hereinafter Yates memo) as establishing that USCIS should give deference to that prior approval. Memorandum from William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3, (Apr. 23, 2004).

First, it must be noted that the Yates memo specifically states as follows:

[A]djudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. See 8 C.F.R. § 103.8(d). . . . Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

Thus, the Yates memo does not advise adjudicators to approve an extension petition when the facts of the record do not demonstrate eligibility for the benefit sought. On the contrary, the memorandum's language quoted immediately above acknowledges that a petition should not be approved, where, as here, the petitioner has not demonstrated that the petition should be granted.

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).

Again, as indicated in the Yates memo, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). If the previous nonimmigrant petition was approved based on the same description of duties and assertions that are contained in the current record, it would constitute material and gross error on the part of the director. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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

In 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.