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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 04 2012** Office: VERMONT 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 Director, Vermont Service Center, 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 is a church and seeks to employ the beneficiary as its music director. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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, finding that the position was not a specialty occupation.

On appeal, counsel for the petitioner submits a brief and additional evidence, and contends that the director's findings were erroneous.

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

The issue before the AAO is whether the 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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

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

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In a letter dated November 10, 2009, the petitioner claimed that it was established in 2001 and currently had a congregation of 250 families. It claimed to require the services of the beneficiary as its music director, noting that the previous music director, [REDACTED] was no longer able to continue serving in the position. The petitioner claimed that the beneficiary would be responsible for directing and leading the petitioner's music ministry for children, youth and adults, and claimed that her duties would include the following:

- Responsible for the leadership, development, and coordination of all the activities of our music ministry program;
- Work with [REDACTED] in planning regular and special worship services;
- Work with [REDACTED] the involvement of the young members in the music activities of the church – [REDACTED]
- Prepare the Adult Choir and conducting them in worship services;
- Recruit, coordinate, and train youth instrumentalists for the Praise Band for performances at various worship services;
- Sing and lead hymns for the congregation with voice and hands;
- Recruit singers and instrumentalist for preparation in choir and instrumental groups;
- Coordinate special music by various local and instrumental soloists and ensembles for various worship services;
- Select and plan music for the liturgical church year and special festivals;
- Administer the music budget and the purchase of music;
- Play the piano, organ or synthesizer as needed for rehearsals, for soloists, and for worship services and church events; and
- Sing solos when appropriate for worship services and church events.

The petitioner further contended that performance of the duties of the position required the attainment of at least a baccalaureate or higher degree, and submitted five job vacancy announcements for positions it contended were similar to that of the proffered position in support of the contention that a baccalaureate or higher degree was commonly required in the petitioner's industry for similar positions.

In a December 23, 2009 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position is a specialty occupation, including but not limited to a more detailed description of the proffered position. The director also requested additional details regarding the petitioner's hiring history for the proffered position.

In a response dated February 3, 2010, the petitioner addressed the director's queries. The petitioner provided the following updated description of duties for the proffered position, which included the percentage of time the beneficiary would devote to each duty:

- Preside over all worship services, weekly choir practices, all special services featuring adult choir, and other services as requested by the [REDACTED] at [petitioner's location]. Lead and conduct congregational singing, adult, and children choirs for worship services. (20%)
- Select hymns and songs for worship services. Coordinate with [REDACTED] for worship service music and other special occasions and seasonal special events. Choose music list well in advance of presentations. In regard to music for cantatas and other special events, music should be chosen at least 12 weeks in advance. (10%)
- Lead and conduct musical performances for special occasions and events including Easter, Christmas, and Fall Festival. (10%)
- Select music for Adult Choir weekly presentations as appropriate for the relevance of the message and the choir personnel present. Music should also compliment the theme of the day or season. (5%)
- Play the piano, organ, or synthesizer as needed for rehearsals, for soloists, and for worship services and church events. (5%)
- Sing solos when appropriate for worship services and church events. (5%)
- Lead weekly Wednesday Adult Choir practices. Work with Adult Choir to be prepared for all presentations, teaching them choral techniques, music theory, and appreciation of sacred music. (10%)
- Work with the Youth and Children's Minister, [REDACTED] to coordinate the involvement of the young members in the music activities of the church – Children Choir and Praise Band. (5%)
- Recruit and audition adult choir personnel and musicians. (2%)
- Supervise the organization and direction of musicians and accompanist. (2%)
- Provide music to the accompanist/musicians by the regular choir practice one week in advance of the choral presentation. (3%)
- Lead weekly Children Choir practices. Work with Children Choir to be prepared for all presentations, teaching them choral techniques, music theory, and appreciation of sacred music. (5%)
- Oversee inventory, ordering and catalogue of new music in music library. Ensure music library is organized and up to date. Oversee purchase of

- musical instruments, sound equipment, and services of outside instrumentalists. (5%)
- Coordinate with intra-church musical groups when joint presentations are conducted. (3%)
 - Attend and provide input at meeting of worship ministry team. (5%)
 - Plan and make recommendations for church music budget. (5%)
 - Arrange for substitute director during any planned absence.

Regarding its hiring practices for the proffered position, the petitioner contended that it previously employed two music directors, both of whom possessed at least a bachelor's degree in music. The petitioner also submitted copies of resumes for candidates who applied, but were not selected, for the proffered position.

On March 29, 2010, the director denied the petition, determining that the petitioner had failed to establish that the proffered position was a specialty occupation. The director found that the proffered position of music director did not require at least a bachelor's degree in a specific specialty as the minimum requirement for entry into the occupation.

On appeal, counsel contends that the director's findings were erroneous, and contends that the director erroneously concluded that the duties of the proffered position were not complex and specialized. Counsel asserts that the evidence submitted was sufficient to establish that the proffered position is a specialty occupation.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree in a specific specialty.

The AAO observes that the critical element is not the title of the position or 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.

To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO first turns to the 2012-2013 online edition of the *Handbook* for its discussion of music directors and composers, the section most akin to the duties of the proffered position as described in the record. As stated by the *Handbook*, this occupational category is described as follows:

Music directors typically do the following:

- Select musical arrangements and compositions to be performed for live audiences or recordings
- Prepare for performances by reviewing and interpreting musical scores
- Direct rehearsals to prepare for performances and recordings
- Choose guest performers and soloists
- Audition new performers or assist section leaders with auditions
- Practice conducting to improve technique
- Meet with potential donors and attend fundraisers

Music directors lead orchestras and other musical groups. They ensure that the musicians play with one coherent sound, balancing the timing, rhythm, and volume. Working with a variety of orchestras and musical groups, they give feedback to musicians and section leaders so that they can achieve the sound and style they want for the piece.

Music directors may conduct youth orchestras or orchestras at colleges and universities. Some work with orchestras that accompany dance and opera companies.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., “Music Directors and Composers,” <http://www.bls.gov/ooh/entertainment-and-sports/music-directors-and-composers.htm> (accessed April 17, 2012). The *Handbook's* description of music directors is akin to that of the petitioner's description of the proffered position. Consequently, the AAO will now review the educational requirements for entry in to this occupation. The *Handbook states*:

A degree in music theory, music composition, or conducting is generally preferred for those who want to work as a conductor or classical composer. To enter these programs, applicants are typically required to submit recordings or audition in person or both.

These programs teach students about music history and styles, as well as composing and conducting techniques. Information on degree programs is available from the National Association of Schools of Music.

A bachelor's degree is typically required for those who want to work as a choir director.

Id. The *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. Although the *Handbook* indicates that a bachelor's degree is *typically* required for those who wish to work as a choir director, it does not state that it is a mandatory requirement and, more importantly, it does not state that the degree must be in a specific specialty.

Moreover, the AAO recalls that, in its letter of support dated November 10, 2009, the petitioner stated that a baccalaureate or higher degree was required to perform the duties of the proffered position, but it did not state that a degree in a specific specialty was required. Therefore, neither the *Handbook* nor the petitioner requires at least a bachelor's degree in a specific specialty for entry into the occupation of music director for a church. The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position. Accordingly, 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. Factors often considered by USCIS when determining the industry standard 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. 1095, 1102 (S.D.N.Y. 1989)).

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. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, as briefly addressed above and for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of five advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in religious organizations. Four of the five postings do not require a bachelor's degree or higher in a specific specialty for entry into the proffered position. Instead, they merely state either that: (1) a bachelor's degree is the educational requirement for entry into the position, or (2) a bachelor's degree with an emphasis in music is preferred. The remaining announcement, published by [REDACTED] states that a bachelor of arts in music with an emphasis in vocals and instrumentals or equivalent is required. However, it also states that in the alternative, equivalent training or experience is acceptable without detailing what it deems to be equivalent to such a specialty degree.

The advertisements provided, therefore, 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, while all announcements seem to be for places of worship, the congregation sizes appear to be larger than that of the petitioner. Moreover, four of the five postings are for full-time positions, whereas the proffered position is part-time and requires only 15 hours per week. As such, it also cannot be determined whether the jobs would be considered parallel to that of the proffered position. As a result, the petitioner has not established that similar establishments in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.¹

Further, the AAO notes that, aside from the evidentiary deficiencies already noted with regard to the job vacancy announcements, they are not supported by reliable documentary evidence establishing that they are representative of a common industry-wide recruiting and hiring practice.

For all of the reasons discussed above, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist her in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether actual performance of the position itself requires the theoretical and practical application of a body of highly specialized

¹ According to the *Handbook's* detailed statistics on music directors, there were approximately 41,300 persons employed as music directors by religious organizations in 2010. *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/entertainment-and-sports/music-directors-and-composers.htm> (last accessed April 10, 2012). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just five job postings with regard to determining the common educational requirements for entry into parallel positions in similar religious 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 job of music director for a church with a congregation of approximately 250 families 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.

knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-specialty-degreed employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there sufficient evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. In response to the RFE, the petitioner claimed in its February 3, 2010 letter that it has always required its music directors to have a bachelor's degree. Although it provided the names and background information on its two previous music directors, the petitioner failed to submit supporting documentation, such as payroll records or W-2 forms, to demonstrate that it had actually employed these persons as claimed. Moreover, despite claiming that these two individuals possessed at least a bachelor's degree in music, no documentation of their educational credentials, such as copies of transcripts or diplomas, were submitted. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Absent additional evidence regarding its hiring practices, the AAO cannot explore this issue further.² Further, it is again worth noting that the degree requirement for each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) is not merely a bachelor's or higher degree, but a degree in a specific specialty directly and closely related to the performance requirements of the proffered position.

The record, therefore, does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that 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 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 required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, 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.

² The AAO notes that, on appeal, the petitioner expands its claim to include persons it claimed served as music director's prior to the petitioner's incorporation, and also submits documentary evidence, such as W-2 forms, to support its claims with regard to its hiring history. However, the AAO will not consider this documentation. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than food service manager and purchasing manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.³

The AAO finds that, to the extent that they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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

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

³ Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other music directors for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

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