



U.S. Citizenship  
and Immigration  
Services

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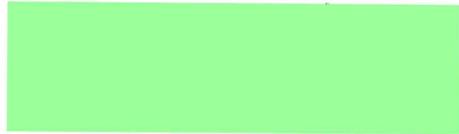
DATE: **APR 01 2013** Office: VERMONT SERVICE CENTER

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting 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 information presented in the petition indicates that the petitioner, which was established in 2010 and has two employees, is a business engaged in academic counseling services for foreign students interested in attending postsecondary schools in the United States. The petitioner seeks to employ the beneficiary as an International Educator Administrator. Accordingly, the petitioner endeavors to classify the beneficiary 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, determining that the proffered position was not 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 additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's December 29, 2011 denial letter; and (5) the Form I-290B, with petitioner's brief and accompanying evidence. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the evidence in the record of proceeding establishes that the proffered position is a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the

particular position, 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. *Cf. 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 Labor Condition Application (LCA) submitted by the petitioner to support the petition was certified for the SOC (O\*NET/OES) Code 11-9033, the associated Occupational Classification of Postsecondary Education Administrators and a Level I prevailing wage rate.<sup>1</sup>

At the outset, the AAO notes that, contrary to the LCA which the petitioner submitted to support this petition, and contrary to the job title that the petitioner assigned to the proffered position, the proffered position is not within the Postsecondary Education Administrators occupational classification and, likewise is not a Postsecondary Education Administrator job as described in the SOC System, in the Occupational Information Network (O\*NET), and in the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (which is hereinafter referred to as the *Handbook*.)

As already noted, the petitioner describes itself as a business that provides academic counseling services for potential foreign students and has two employees. Thus, the petitioner is not a postsecondary educational institution (such as, for example, a college, university, or community college).

In its July 15, 2011 letter of support, the petitioner indicated that the beneficiary's role in the counseling business would entail the following tasks (verbatim):

[A]ssisting foreign students in making academic as well as personal-social decisions in connection with their desire to enroll in postsecondary institutions in the United States including universities, colleges, junior and community colleges; research involving the complexities of advising prospective foreign students on the most appropriate educational plan for them based upon their specific cultural and educational backgrounds and needs; evaluating students' qualifications in light of varying admission requirements among institutions; and providing assistance to prospective students in complying with

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<sup>1</sup> The official Bureau of Labor Standards, U.S. Department of Labor, Internet site for accessing SOC (i.e., Standard Occupational Classification) codes is <http://www.bls.gov/soc/home.htm>.

governmental regulations concerning status, visas, passports and similar requirements.

In the petitioner's RFE response letter, dated December 1, 2011, the position description included some additional details. There the petitioner's president maintained that the proffered position requires a degree in a relevant field, such as international relations, in order to competently execute the position's duties. The petitioner's president also declared that the proffered position is crucial for the continued growth of the company and set forth the expanded description of the duties. Presented below is that letter's description of the proffered position:

The position of International Education Administrator is crucial for the continued growth of our company. The specific duties inherent in said position include detailed market research involving competitive data; research of foreign educational systems and comparison of academic credentials; creation of [the petitioner's] program and service structures; creation of the corporate web site including the direction of design process, development and implementation of such; oversight of the development and implementation of our foreign language web sites; development of advertising campaigns directed toward highly motivated foreign students; contact with high schools and universities in our target countries resulting in student recruitment; detailed research on all relevant scholarships for our targeted student population; standardized test preparation; communication with potential students and their parents regarding the varied admission processes among school in the United States; detailed and updated scholarship research as relevant to each prospective student; and providing the expertise necessary, after detailed review of each prospective student's credentials, needs and desires regarding the furtherance of their education, to assist them in the college selection process.

In contrast to the information that the petitioner has presented about the proffered position and its constituent duties, the Bureau of Labor Statistics of the U.S. Department of Labor (DOL) information on the aforementioned SOC code and occupational classification specified in the LCA includes the following:

11-9033 Education Administrators, Postsecondary

**Plan, direct, or coordinate research, instructional, student administration and services, and other educational activities at postsecondary institutions, including universities, colleges, and junior and community colleges.**

Illustrative examples: *Provost, University Administrator*

Broad Occupation: 11-9030 Education Administrators

Minor Group: 11-9000 Other Management Occupations

Major Group: 11-0000 Management Occupations

U.S. Dep't of Labor, Bureau of Labor Statistics, 2010 Standard Occupational Classification System (2010 version), SOC code 11-9033: Education Administrators Postsecondary, <http://www.bls.gov/soc/2010/soc119033.htm> (last visited February 22, 2013).

The *Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses, describes the Postsecondary Educational Administrators occupational classification as follows:<sup>2</sup>

Postsecondary education administrators oversee student services, academics, and research at colleges and universities. Their job duties vary depending on the area of the college they manage, such as admissions, the office of the registrar, or student affairs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Postsecondary Education Administrators," <http://www.bls.gov/ooh/management/postsecondary-education-administrators.htm#tab-2> (last visited February 14, 2013).

Further, the *Handbook* indicates that postsecondary education administrators fall into four distinct categories: admissions; registrars; student affairs; and provosts/academic deans. Significantly, the subsection of the *Handbook's* chapter on postsecondary education from which the above information was drawn also states:

Postsecondary education administrators work in colleges, universities, community colleges, and technical and trade schools. Some work for public schools, and others work for private schools.

Likewise, the O\*NET's introductory overview at the outset of its Summary Report on Postsecondary Education Administrators also clearly places this occupational group exclusively within, working for, and working upon matters generated by educational institutions to which this petitioner does not belong: The pertinent section of the O\*NET reads as follows:<sup>3</sup>

**11-9033.00 - Education Administrators, Postsecondary**

Plan, direct, or coordinate research, instructional, student administration and services, and other educational activities at postsecondary institutions, including universities, colleges, and junior and community colleges.

**Sample of reported job titles:** Dean, Registrar, Academic Dean, Provost, Academic Affairs Vice President, College President, Admissions Director, Dean of Students, Financial Aid Director, Academic Affairs Dean

<sup>2</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>3</sup>

Employment & Training Administration, U.S. Department of Labor, O\*Net OnLine, Summary Report for Education Administrators, Postsecondary, which is accessible on the Internet at <http://www.onetonline.org/link/summary/11-9033.00> (visited March 14, 2012). Consequently, as the proffered position is *not* within the Postsecondary Education Administrators occupational classification, the AAO finds that the petitioner's reliance upon any information regarding that occupational group, whether from the *Handbook* or any other informational resource, is misplaced and unwarranted. As indicated by the above discussion regarding the DOL's information regarding Postsecondary Education Administrators, such information is neither relevant to, nor probative of, the educational or education-equivalency requirements of the proffered position, and, as such, the AAO accords no evidentiary weight to it.

Additionally, the AAO finds that the second iteration of the job duties as quoted above are not sufficient in themselves to establish the level of international relations applications that the beneficiary would have to apply and any associated level of international relations education that would be necessary to employ those applications.

On December 29, 2011, the director denied the petition, and observed that the evidence of record failed to demonstrate that the proffered position as a specialty occupation.

In its statement on appeal, the petitioner, through counsel, asserts that the director's denial was erroneous, and declares that conducting business in an international educational environment necessarily entails cultural sensitivity as manifested through etiquette, protocol, communication styles and negotiation approaches to serve the target clientele. As such, the petitioner posits that the proffered position requires a baccalaureate degree in a relevant field, such as international relations. On appeal, there are four main arguments. First, that the international educator administrator position is a transitional occupation that should be considered a specialty occupation under the INA. Second, counsel maintains that the degree requirement is common to the industry in parallel positions among similar organizations. Third, counsel claims that the position is complex and unique. Fourth, counsel asserts that the proffered position is the center of the petitioner's business plan and that the nature of the specific duties are so specialized and complex.

The AAO will now address counsel's argument that the proffered position is a transitional occupation. Specifically, counsel maintains that the service recognizes that some occupations may be in transition from nonprofessional to professional status. In support of this contention, counsel cites *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). However, in that case, the petitioner – which was a manufacturer and dyer of hand knitting and industrial yarns – filed a petition to classify the beneficiary as a nonimmigrant of distinguished merit and ability, pursuant to section 101(a)(15)(H)(i) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i) (1982), so that it might employ that person as its vice-president of manufacturing. By the time that the instant petition was filed, however, that particular statute and the regulations that implemented it, which were the focus of *Matter of Caron International*, had long been replaced and superseded by the distinctly different statute and regulations for H-1B specialty occupation petitions, under which the present petition was filed. In particular, as is clear from their plain wording, neither section 101(a)(15)(H)(i)(b) of the Act (which creates the H-1B specialty-occupation classification), nor

section 214(i)(1) of the Act (which defines the term "specialty occupation"), nor the regulation at regulation at 8 C.F.R. § 214.2(h)(4)(ii) (which incorporates the statutory definition into the H-1B specialty occupation regulations), nor any of the other H-1B regulations, at 8 C.F.R. § 214.2(h), adopted inclusion in the professions as a standard for establishing a position as specialty occupation. Accordingly, *Matter of Caron International's* comments regarding the possibility of employers establishing certain occupations as professions if they are shown to be "in transition from professional to nonprofessional" have no bearing upon or relevancy to this appeal.<sup>4</sup>

Counsel's reliance on *Matter of Caron International* therefore is misplaced. First, the H-1B specialty occupation statutes had not yet been legislated and the associated regulations had not yet been promulgated when that precedent decision was decided. Second, in contrast to regulatory and statutory scheme applied in *Matter of Carron International*, under section 101(a)(15)(H)(i) of the Act, the statutory and regulatory framework that governs the H-1B specialty occupation issue in the present appeal does not include classification of a position as "professional" as a qualifying criterion for classifying a position as a "specialty occupation." Third, the concept of a "transitional occupation" is not recognized in any statute, regulation, or agency precedent decision as an element in determining whether a particular position qualifies as an H-1B specialty occupation, as defined at Section 214(i)(1) of the Act and at 8 C.F.R. § 214.2(h)(4)(ii).

Counsel contends that the record of proceeding contains "clear and convincing" documentary evidence that the degree requirement is common to the industry in parallel positions among similar organizations. To support this contention, counsel submitted ten (10) advertisements, but failed to establish that the similarity between the advertising organizations and the petitioner. Likewise, counsel did not show that the positions advertised are parallel to the proffered position. The AAO will discuss this in more detail later in this decision.

On appeal, counsel also claims that the unique complexities of the proffered position establish that it is a specialty occupation, citing an unpublished AAO decision. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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. When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also*

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<sup>4</sup> The fourth of the six-part decision-synopsis at the beginning of *Matter of Caron International* describes the "transitional occupation" concept as follows:

- (4) Certain occupations may be in transitional from nonprofessional to professional status. In such cases, employers may be able to establish a position as professional by nature by demonstrating that the higher standard of a specific-baccalaureate level degree has been consistently required for the more complex positions within their organizations.

*Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO was required to request and/or obtain a copy of the unpublished decisions cited by counsel.

To support its contention that the nature of the specific duties is so specialized and complex as to merit recognition of the proffered position as a specialty occupation, the petitioner submits, as Exhibit A on appeal, copies of: (1) a letter of introduction to the petitioner's services in English; (2) untranslated letters in a foreign language that also appear to introduce the petitioner and its services to potential customers; (3) untranslated foreign-language documents that the petitioner identifies as promotional materials; (4) purchase orders for leaflet distribution in Turkey; (5) what the petitioner describes as "photographs taken during leaflet distribution in Turkey," accompanied by a copy of e-mail traffic addressing that distribution; (6) untranslated foreign-language documents that the petitioner identifies as communications between itself and international printing and distribution firms in Slovakia; (7) a mix of English language and untranslated foreign language emails that the petitioner identifies as "Communication, including admission testing and placement, between [the petitioner] and clients as well as prospective schools in the United States"; (8) documents identified as invoices for editing services; (9) and untranslated foreign language documents that the petitioner identifies as "Invoices for educational counseling services by [the petitioner] to clients in target companies including Turkey and the Czech Republic. As will now be discussed, the AAO does not concur with the petitioner's assessment of the evidentiary value of these documents.

At the outset, the AAO notes that it will accord no evidentiary weight to the content of any of the untranslated documents in a foreign language. The AAO notes that these include a substantial amount of appellate Exhibit B, including four of the five letters of introduction to the petitioner's services; all of the petitioner's promotional materials; and the communications between the petitioner and the printing and distribution firms. In a similar vein, the AAO finds that the petitioner's statement that these materials evidence the delineated, highly specialized and complex duties ascribed to the proffered position, is without merit because, without a properly certified translation into English, those documents have no probative value.<sup>5</sup> Moreover, the AAO finds that none of the documents submitted as Exhibit B on appeal were adequately contextualized within the position's duties, nor supplemented by a persuasive analysis of how those documents manifest, by specialization, complexity, uniqueness, or any other measure, that performance of the proffered position would require the practical and theoretical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty,

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<sup>5</sup> See the regulation at 8 C.F.R. § 103.2(b)(3), which states:

*Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

so as to qualify the proffered position as a specialty occupation as defined at section 214(h)(4)(iii)(A)(I) as a meet the definition of specialty occupation in a knowledge acquired in a specific specialty that directly relates to the proffered position, would be applied when accomplishing the stated duties. On appeal, the petitioner again presented the job duties, which build upon the second iteration of the job duties, presented in the RFE response, which the petitioner presented as follows:

- market research including collecting and analyzing data and examining prices and services in target countries;
- detailed research of foreign educational systems and comparison of academic credentials;
- scholarship research;
- creation of [the petitioner's] program and service structures;
- contacting high schools and universities in target countries;
- application review;
- admission advising in the college selection process;
- standardized test preparation;
- informed assistance to foreign students and their parents in target countries in making both academic and personal-social decisions in connection with their desire to reenroll in postsecondary institutions in the United States;
- evaluation of students' qualifications in light of varying admission requirements among academic institutions;
- facilitation of communication between National Collegiate Athletic Association (NCAA) and student athletes;
- facilitation of communication between coaches and student athletes;
- oversight of the design, development and implementation of our foreign web site; and
- supervision of all related translation and editing services.

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)(I), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

As already discussed in this decision, and notwithstanding the petitioner's assertions to the contrary, the proffered position and its constituent duties do not belong within the occupational classification claimed by the petitioner, that is, Postsecondary Education Administrators. The AAO further finds that, to the extent that they are described in the record of proceeding, the duties are not indicative of a position for which a bachelor's or higher degree in a specific specialty is the normal minimum requirement for entry. In this regard, the AAO finds that the evidence in the record of proceeding fails to provide sufficiently specific and substantive details about the proposed duties to show whatever practical and theoretical applications of a body of highly specialized knowledge their performance would require. Likewise, the evidence of record does not establish that, in the context of the petitioner's counseling business, such skeletally sketched duties comprise a position for which the normal requirement for entry is at least a bachelor's degree, or the equivalent, in a specific specialty.

As the *Handbook* does not support the petitioner's claim that the proffered position is that of postsecondary education administrator, and as the evidence of record does not otherwise establish that the proffered position is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry, the petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO will analyze whether the petitioner has 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 requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 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. In addition, 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, for the reasons discussed in 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 ten (10) advertisements. It is obvious that the submitted job vacancy advertisements are not for parallel

positions in similar organizations in the same industry; also, few of the advertisements even indicate that a degree requirement be satisfied by a degree in a specified specialty.

The AAO finds that two of the advertisements submitted show that the advertising entities require a bachelor's degree in international education, and eight of the advertising entities did not specify bachelor's degree fields. Also of note, eight of the advertising entities were colleges or universities, and therefore cannot be considered to be organizations similar to the petitioner, a small, two-person, private entity. Along this same vein, another advertising entity was a private boarding school, and yet another was a private educational and career services provider with 70 campuses all over the globe, for these reasons, the AAO finds that these advertising entities are not organizations similar to the petitioner. The AAO observes that this mismatch between the type of organization that the petitioner is and the organization types that are presented in the advertisements is a natural manifestation of the fact that, despite the petitioner's insistence, the position for which this petition was filed is not actually that of a postsecondary education administrator.

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

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that only an individual with at least a bachelor's degree in a specific specialty can perform the work associated with the position.

In this particular case, the petitioner has failed to demonstrate that the duties the beneficiary would 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. As reflected in this decision's earlier comments regarding the skeletal nature of the duty descriptions, the proposed duties as so generally described are not indicative of a position with the complexity or uniqueness required to satisfy the present criterion. The AAO hereby incorporates into this analysis those comments and also its earlier comments regarding the lack of probative value of documents submitted as Exhibit A on appeal.

The petitioner asserts that the position is so complex and/or unique because the business serves a target clientele largely based in Central and Eastern Europe, and therefore requires conducting business in a way that involves cultural awareness. The AAO observes that counsel advances a beneficiary-driven claim that the beneficiary would apply her knowledge of theories behind effective communication practices, evaluation methods, and research skills, as well as the conceptual knowledge, practical knowledge, and skills acquired from her Master of Arts degree in International Relations. Nonetheless, as already discussed, the evidence of record does not establish that performance of the proffered position would involve the application of at least a bachelor's degree level of a body of highly specialized knowledge in any specific specialty.

Additionally, the petitioner also asserts that the position is crucial to the petitioner's business plan, but does not adequately establish a nexus between the position's alleged complexity or

uniqueness and any application of the specialized knowledge it claims is necessary for the position. Moreover, the petitioner fails to develop or provide satisfactory probative support regarding its business plan, and therefore the AAO cannot find that the position as performed within the petitioner's business would be sufficiently complex or unique. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on these reasons also, the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Further, the AAO notes, on the LCA, the petitioner has designated the proffered position as a Level I position, 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). This fact also does not weigh in favor of the proffered position being distinguished by relative complexity or uniqueness.

The AAO finds that the Level I designation of the proffered position is of particular significance to this decision, because this level is a designation for an entry-level position for an employee who has only a basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009).

As indicated by the above-referenced policy guidance, 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. Prevailing wage determinations start with an entry level wage (i.e. Level I) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (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. 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 as indicated by the job description.

The earlier referenced *Prevailing Wage Determination Policy Guidance* from DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

**Level I** (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.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

The DOL wage rate description indicates that if a position were particularly complex or unique relative to others within the same occupational classification, then the Level I designation would not logically follow. The AAO, therefore, notes that the LCA wage-level weighs against this particular petition satisfying the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner therefore failed to establish that the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique that it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is 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, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the employer demonstrate that it normally requires for the position at least a bachelor's degree, or its equivalent, in a specific specialty.

The AAO's review will, of course, always include whatever evidence has been submitted with regard to the petitioner's past recruiting and hiring practices, as well as with regard to the credentials and relevant history of employees who previously held the position, such as documentation of their educational attainment when they were hired for the position and documentation of their term of employment with the petitioner.

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 or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation 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 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.

In the instant matter, the petitioner offers no supporting evidence relating to its past recruiting or hiring practices, nor does it offer any evidence regarding the recruitment of the beneficiary. 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)).

As the evidence in the record of proceeding does not demonstrate that the petitioner has an established history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree or equivalent in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>6</sup>

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.

Into this discussion and analysis, the AAO hereby incorporates this decision's earlier comments and findings with regard to the lack of probative value of the documents submitted as Exhibit A on appeal.

As evident in this petition's descriptions of the proposed duties, and as reflected in this decision's earlier comments about their lack of substantive specificity, the petitioner has not sufficiently developed relative specialization and complexity as an aspect of the proffered position's duties. Although the petitioner submitted evidence on appeal to support the contention that the position's duties are specialized and complex, much of the evidence was in a language other than English, without competent translations. The AAO will therefore accord no probative weight to those documents. Other evidence submitted, including one letter introducing the

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<sup>6</sup> To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. 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.

petitioner's services, photographs of leaflet distribution in Turkey; purchase orders for leaflet distribution in Turkey; invoices for editing services; and invoices for counseling services; were submitted by the petitioner, and referenced as evidence of the delineated, highly specialized and complex duties. This statement, unadorned by a persuasive explanation regarding the claimed level of specialization and complexity, and given no contextualization whatsoever regarding the applicable baccalaureate-level knowledge that would be required to accomplish the stated duties, is an inadequate presentation of the asserted specialization and complexity. In other words, the level of specialization and complexity that may be inherent in the documents submitted on appeal are not self-evident and not substantiated by an evidence within the record of proceeding.

Moreover, the AAO incorporates its earlier discussion regarding the wage-level designation on the LCA, which is appropriate for duties whose nature is less complex and specialized than required to satisfy this criterion.

For the reasons discussed above, the AAO finds that the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold 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.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence 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 in great detail, except to note that the beneficiary's international relations courses do not clearly indicate that the beneficiary would have acquired the skills and knowledge that counsel claims that the beneficiary had gained. Notably, the transcript indicates that the beneficiary completed courses in The Changing Face of Europe, Introduction to International Re[a]lm; Classics of International Relations; Homeland Security; Power & Legitimacy; Middle East 1798-1922; Reemergence [of] Russia; European Integration; and two other listed courses that have indecipherable course titles. Counsel claimed that these courses imparted knowledge in theories behind effective communication practices, evaluation methods, research skills, cross cultural counseling and advising, intercultural programming, crisis management and administration. However, the AAO

finds that, in the absence of substantiating documentation and persuasive explanation, the reliability of the claim is not established.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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