



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 03 2013** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a company, established in 1996, that provides advice on international oil, gas, and other energy investments. In order to employ the beneficiary in what it designates as a public relations specialist position, the petitioner seeks 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, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The primary issue for consideration 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 employment it is offering to the beneficiary meets the applicable 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.

In the petition signed on April 16, 2012, the petitioner indicates that it is seeking the beneficiary's services as a public relations specialist on a full-time basis at the rate of pay of \$41,000 per year. In the April 16, 2012 letter of support, the petitioner states the following:

As a Public Relations Specialist, [the beneficiary] will perform the following professional duties:

- Engage in promoting or creating good will for [the petitioning] company by writing or selecting favorable publicity and media material, promotional material and/or advertising material and releasing it through various communications media.
- Manage media development for the [petitioner's] Group of companies with a particular emphasis on realizing global growth and promoting the company globally.
- Manage the build out of the new company website in the Dallas office; work closely with marketing personnel to design and draft the company's hard copy promotional brochures based on the website.
- Develop promotional brochures for the oil and gas projects the company has mandates to sell.
- Manage media outreach for the company, arrange placement of articles in newspapers and journals, arrange keynote speaking opportunities at the major investment and industry conferences that will showcase the company's technology and database and enhance [the] company's image.
- Work with senior technical staff to coordinate their input into the website, brochures and presentations.
- Coordinate all promotional resources so that a uniform high quality presentation is adopted throughout the company's promotional materials that are in the client and the public eye.
- Ensure that presentations in foreign jurisdictions are sensitive to local cultures, use of language and technical specifications and units.
- Ensure that translated material meets the same sensitivity and common use of language requirements.
- Plan and direct development and communication of information designed to keep public informed of [the petitioning] company's programs, accomplishments, product development, or point of view.
- Prepare and distribute fact sheets, news releases, photographs, and scripts

to media representatives and promotional people who may be learning about or publicizing company's activities.

- Conducts research to determine changing attitudes and opinions of consumers, clients, vendors, and employees in order to increase sales and profits.

In addition, the petitioner states that the position "requires one who, among other things, has completed the appropriate degree program of study in Public Relations, Media Management, or other very closely related field."¹ The AAO observes that the petitioner does not indicate the degree level (e.g., associate's degree, vocational degree, baccalaureate, master's degree) for the position, and also does not specify that the minimum academic requirement for the position is at least a *bachelor's degree*.

With the Form I-129 petition, the petitioner submitted a copy of the beneficiary's transcript from the [REDACTED] which indicates that she was granted a Master of Business Administration on May 31, 2011. The petitioner also submitted promotional materials regarding its business operations.

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Public Relations Specialists" - SOC (ONET/OES Code) 27-3031, at a Level I (entry level) wage.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 3, 2012. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted. The AAO notes that the director specifically requested the petitioner submit a more detailed description of the proffered position, to include approximate percentage of time for each duty the beneficiary will perform; the educational requirements of the proposed position; and how the beneficiary's education relates to the position itself.

On July 20, 2012, the petitioner and counsel responded to the director's RFE. Specifically, the petitioner and counsel submitted, in part, (1) a list of its positions and the degrees held by its employees; (2) an excerpt entitled "Summary Report for: 27-3031.00 – Public Relations Specialists" from the Occupational Information Network (O*NET); (3) an excerpt entitled "Public Relations Managers and Specialists" from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*); (4) a printout from oedb.org; (5) an blog article entitled "Experience vs. Education: Do You Really Need a Master's Degree for PR?" from Julie Walsh; (6) job vacancy announcements; and (7) documentation regarding the petitioner's business operations, including the first page of its 2011 Income Tax Return (unsigned); an organizational chart; a table of its mandates from 2006 to 2012; a list of its clients; printouts of events that the petitioning

¹ The petitioner stated that "among other things" the position requires "the appropriate degree program of study," but did not provide any further specificity as to these "other things" that are required for the proffered position.

company has sponsored; printouts from its website; a 2008 article written by the petitioner's managing director; and related materials.

In addition, the petitioner submitted a letter dated June 28, 2012. In the letter, the petitioner provides the following information about the beneficiary's duties in the proffered position:

She will spend approximately 15% of her time in promoting or creating good will for our company by writing or selecting favorable publicity and media material, promotional material and/ or advertising material and releasing it through various communications [sic] media. This has not been attempted before in an organized manner.

* * *

She will spend approximately 15% of her time managing media development for the [petitioner's] Group of companies with a particular emphasis on realizing global growth and promoting the company globally. The challenge here is to find affordable global opportunities to represent the company. The company's growth is limited by the current model of speaking to a small specialized audience comprised of the international oil companies and the major law firms and urgently needs to reach out to a much broader global audience including governments and national oil companies which hold 95% of the oil and gas reserves in the world. Currently [the petitioner] has no penetration into these entities and no standing as a major expert outside the limited confines of the existing joint ventures, which is where [the beneficiary's] specialized skills in public relations will be essential.

She will spend approximately 7% of her time managing the build out of the new company website in the Dallas office and will work closely with marketing personnel to design and draft the company's hard copy promotional brochures based on the website. The company has received bids to develop a new website and has found that it is much more cost effective to have a Public Relations Specialist in charge to coordinate such an important responsibility and to modify content frequently in order to foster the good will and enhance the reputation of the company.

She will spend approximately 12% of her time developing promotional brochures for the oil and gas projects the company has mandates to sell. The company has an increasing number of mandates annually and these are of much higher complexity than even five years ago. These have to be updated monthly and presented in several languages; the firm currently offers versions in Chinese, Korean and Russian. The four fold increase in the number of mandates, the vastly increased mandates in funding Information Memorandum requires a significantly greater capacity to develop the company's image to a very high standard suitable for publication in major documents. She must also be sensitive to cultural norms and colloquialisms so

that [the petitioner's] marketing and print materials do not inadvertently offend any particular culture or country.

She will spend approximately 7% of her time managing media outreach for the company, arranging placement of articles in newspapers and journals, arranging keynote speaking opportunities at the major investment and industry conferences that will showcase the company's technology and database and enhance [the petitioning] company's image. The firm currently handles this by word of mouth and industry contacts, but having [the beneficiary] will enable [the petitioner] to have a well-coordinated plan to pre-organized speeches and newspaper releases in advance of the company expecting to obtain license or contracts, which would enhance the firm's ability to win contracts through an enhanced social position of the firm's standing within the industry.

She will spend approximately 5% of her time working with senior technical staff to coordinate their input into the website, brochures and presentations. The senior staff all travels extensively, thus they can provide valuable input into cultural norms and traditions and provide the feedback necessary to address image issues that the company wants to avoid and to identify trends that could propel the company's prominence and/or help the Public Relations Specialist focus PR on emerging markets.

She will spend approximately 5% of her time coordinating all promotional resources so that a uniform high quality presentation that reflects the company's mission and good reputation is adopted throughout the company's promotional materials that are in the client and the public eye. Currently the company's multitude of brochures reflects a rather eclectic mix of different backgrounds, colors, fonts, expertise throughout different PR documents of various vintages. These need to be normalized and a coherent mission and image presented.

She will spend approximately 10% of her time ensuring that presentations in foreign jurisdictions are sensitive to local cultures, use of language and technical specifications and units so as to continue the firm's good will and reputation. With our extensive travel and international focus, [the petitioner] must constantly be vigilant so as not to offend and to instead flatter [its] international collaborators and to protect [its] business in the highly sensitized world of 2012.

She will spend approximately 3% of her time ensuring that translated material meets the same sensitivity and common use of language requirements. In order to accomplish this, she will need to research business and cultural norms for a variety of countries worldwide and monitor changes.

She will spend approximately 10% of her time planning and directing development and communication of information designed to keep the national and international public informed of [the petitioning] company's programs, accomplishments, product

development, *or* point of view. This needs to be managed in a coordinated fashion at a modest cost commensurate with the Firm's budget.

She will spend approximately 8% of her time preparing and distributing fact sheets, news releases, photographs, and scripts to media representatives and promotional people who may be learning about or publicizing company's activities. [The petitioner's] activities are quite complex and [its] offerings extensive, thus media must be informed in an easy to understand way what [the petitioning company] do[es] and how it can be portrayed in the media to [the petitioner's] advantage. [The petitioner] experience[s] a variety of requests for news and scripts for media and [the beneficiary] will coordinate and respond to these requests using the most effective public relations techniques.

She will spend approximately 3% of her time conducting research and analyzing industry articles to determine changing attitudes and opinions of consumers, clients, vendors, and employees in order to increase sales and profits. The Firm tends to be reactive to industry trends and [the beneficiary] will be responsible for a more organized, managed effort for media research. RSS feeds and conference themes, industry activity particularly in acreage/leasehold acquisition to determine trends [sic] so the Firm can be on the cutting edge.

The petitioner also states that "a Public Relations Specialist is a professional position and requires a person who has at least a Bachelors [sic] degree in the specific field of Public Relations, Media Management, International Business or other very closely related area."

The director reviewed the information provided. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on July 31, 2012. Counsel submitted an appeal of the denial of the H-1B petition. With the appeal, the petitioner and counsel submitted additional evidence.²

² With regard to documentation submitted on appeal that was encompassed by the director's RFE, the AAO notes that this evidence is outside the scope of the appeal. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 it with the initial petition or in response to the director's request for evidence. *Id.* The petitioner

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. To make this determination, the AAO turns to the record of proceeding. To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

The AAO reviewed the record in its entirety and will make some findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.

It must first be noted that the petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. In the initial submission, the petitioner stated that the proffered position requires the incumbent to have "completed the appropriate degree program of study in **Public Relations, Media Management**, or other very closely related field (emphasis added)."³ Thereafter, in response to the RFE, the petitioner claimed that the position requires "at least a Bachelors [sic] degree in the specific field of **Public Relations, Media Management, International Business** or other very closely related area (emphasis added)."⁴ The petitioner did not acknowledge or provide any explanation for the variance.⁵

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a

has not provided a valid reason for not previously submitting the evidence. Under the circumstances, the AAO need not and does not consider the sufficiency of such evidence submitted for the first time on appeal.

³ Further, the AAO notes to establish eligibility, a petitioner must demonstrate that the proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner's stated requirement that the proffered position requires the completion of "the appropriate degree program of study" does not specify that such a degree is a baccalaureate or higher degree.

⁴ Notably, in a letter dated July 18, 2012 (also submitted in response to the RFE), counsel for the petitioner states that the evidence establishes that a degree in the "field of Public Relations, Media Management, or closely related field is the normal, entry-level requirement for this occupation." Counsel did not indicate that the evidence establishes that a degree in international business is also acceptable.

⁵ The petitioner has provided inconsistent information as to the academic requirements of the proffered position. 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).

request for evidence, a petitioner cannot materially change the requirements for the position. That is, the petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If a significant change is made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence altered the requirements for the proffered position by stating a requirement for at least a bachelor's degree and adding the discipline "international business" as an acceptable field of study. A petitioner may not make a material change to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Moreover, the petitioner asserts that almost 30% of the beneficiary's time will be dedicated to "managing" and that her duties will include "directing." However, the petitioner did not provide sufficient information regarding the "managing" and "directing" duties (including the number of subordinate employees, if any, and their job titles and duties) to determine the beneficiary's daily responsibilities, and which tasks the beneficiary will oversee and which tasks she will actually perform. Further, a critical analysis of the nature of the petitioner's business undermines the assertion that subordinate employees relieve the beneficiary from performing non-qualifying duties. It appears from the record that the only individual performing any public relations-related functions will be the beneficiary (counsel states in the appeal that the beneficiary "will be solely responsible for the company's Public Relations (sic) campaign"). The petitioner states that it has 18 employees, including one executive assistant who "handles administrative responsibilities that come up." The executive assistant apparently provides support to the president; three managing directors; the information technology department, A&D associates; economist(s); petroleum engineer(s); a graphic designer; and analyst(s). Thus, without further information, the petitioner has not sufficiently established how the beneficiary will be relieved from performing non-qualifying duties. Additionally, it is worth noting that as the executive assistant has been described as performing administrative functions, it can only be assumed, and has not been demonstrated otherwise, that the beneficiary will perform all public relations functions. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be primarily employed in a managerial capacity (in the instant case "managing" and "directing"). *See generally Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Furthermore, based upon a review of the record of proceeding, the AAO finds that there are additional discrepancies and inconsistencies with regard to the proffered position that preclude the approval of the petition. For instance, there are discrepancies between what the petitioner claims about the occupational classification and level of responsibility inherent in the proffered position set against the contrary occupational classification and level of responsibility conveyed by the wage level indicated on the LCA submitted in support of the petition.

As previously discussed, the petitioner submitted an LCA in support of the petition that designated the proffered position to the corresponding occupational category of "Public Relations Specialists" - SOC (ONET/OES) code 27-3031. The wage level for the proffered position in the LCA corresponds to a Level I (entry) position. The prevailing wage source is listed in the LCA as the

OES (Occupational Employment Statistics) OFLC (Office of Foreign Labor Certification) Online Data Center.⁶ The LCA was certified on April 11, 2012. The AAO notes that by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (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.⁷

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) position 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.⁸ DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees

⁶ The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. See Bureau of Labor Statistics, U.S. Department of Labor, on the Internet at <http://www.bls.gov/oes/>. The OES All Industries Database is available at the Office of Foreign Labor Certification (OFLC) Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatacenter.com/>.

⁷ For additional information regarding prevailing wage determinations, see U.S. Department of Labor, 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/Policy_Nonag_Progs.pdf.

⁸ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

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/Policy_Nonag_Progs.pdf.

In the instant case, the petitioner and counsel repeatedly claim that the proffered position involves complex, unique and/or specialized duties. Additionally, the petitioner states that the beneficiary's duties will include "managing" as well as "directing." According to the petitioner, "specialized skills are essential" to the position. In addition the petitioner claims that the beneficiary will develop "promotional brochures for the oil and gas projects the company has mandates to sell," which "are of much higher complexity than even five years ago." The petitioner further reports that "[t]hese have to be updated monthly and presented in several languages."⁹ In addition, the petitioner claims that its "activities are quite complex and [its] offerings extensive."

Moreover, the petitioner references "[t]he complexity of these specific job duties." The petitioner

⁹ More specifically, the petitioner states that the beneficiary's job duties will include the following:

[She will develop] promotional brochures for the oil and gas projects the company has mandates to sell. The company has an increasing number of mandates annually and these are of much higher complexity than even five years ago. These have to be updated monthly and presented in several languages; the firm currently offers versions in Chinese, Korean and Russian. . . . She must also be sensitive to cultural norms and colloquialisms so that [the petitioner's] marketing and print materials do not inadvertently offend any particular culture or country.

* * *

[She will ensure] that translated material meets the same sensitivity and common use of language requirements. In order to accomplish this, she will need to research business and cultural norms for a variety of countries worldwide and monitor changes.

The petitioner does not specify whether the proffered position includes a foreign language requirement. However, the AAO notes that a language requirement other than English in a petitioner's job offer generally is considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers. Accordingly, if the position does require foreign language skills, it would be necessary for the petitioner to ensure that the foreign language requirement was reflected in the wage-level for the proffered position.

claims that "the vastly increased mandates in funding Information memorandum requires (sic) a significantly greater capacity to develop the company's image to a very high standard suitable for publication in major documents." The petitioner asserts that the beneficiary "must be sensitive to cultural norms and colloquialisms so that [its] marketing and print materials do not inadvertently offend any particular culture or country." According to the petitioner the beneficiary's work will include ensuring "a uniform of high quality presentation." In the appeal, the petitioner emphasizes "the complexity of the company operations, the complexity of the duties, and extensive public relations that the company is already engaged in." The petitioner states that the company has "unique features" and further claims that the "PR skill necessary to evaluate media and media audiences on a global scale" are "critical" to the proffered position.

Additionally, counsel also claims that the evidence submitted in response to the RFE "demonstrate[s] the complexity of the company operations, the complexity of the duties, and the extensive public relations the company is already engaged in." Counsel reiterates the petitioner's claim that the documentation shows the "company's unique features." Furthermore, he repeatedly references the "complexity of the duties [of the proffered position]." He claims that the "evidence provides significant detail about how the duties are so unique and focused solely on intricate public relations responsibilities." In addition, counsel states that "[i]t should also be noted that the international/global nature of the company and job duties makes the position much more complex and unique." In support of this assertion, counsel states that the beneficiary must be aware of media outlets in the United States and "emerging media, trends, business customs, language use, and cultural and political sensitivities throughout the world."

According to counsel, the petitioner's job duties for the proffered position require "a highly skilled Public Relations Specialist" and the petitioner "requires a professional Public Relations Specialist to go one step further." Counsel also emphasizes "the complexities involved in handling public relations globally for oil, gas and energy companies" and further claims that "[t]hese companies have a high degree of visibility with the public and heightened interest in a variety of complex and often controversial issues." Counsel further states that "the international scope of the duties which are performed in the highly sensitive and volatile global energy industry" is a relevant factor in this matter. He also reports that the "Public Relations Specialist must globally establish and maintain cooperative relationships with representatives of foreign governments, the local and national community, consumers, employees, and industry associations." Counsel claims that "[t]his will require extensive industry research as well as cultural and business customs research specific to each country." As stated by counsel, the duties of the position must be considered in the context of "a volatile and scrutinized industry."

Counsel claims that the beneficiary will "independently identify and develop" media campaigns and she will be "responsible for strategic media relations." Counsel states that the beneficiary's duties "support the company's market leadership." Furthermore, counsel reports that the beneficiary "will be solely responsible for the company's Public Relations campaign." Additionally, counsel references "the complexity of the duties in the context of the highly visible and scrutinized international oil, gas and energy industry" as well as "the company's extensive public relations engagements." Moreover, counsel emphasizes "the international scope of [the petitioner's] operations and the need for extensive research on public relations issues dealing with specific

countries, most of which are politically and socially volatile." In support of the claim regarding the "complex international scope" of the company's operations, counsel states that it is important to consider "the international scope of the duties which are performed in the highly sensitive and volatile global energy industry." Furthermore, counsel asserts "that the Public Relations Specialist has the professional skills to conduct extensive country-specific research as well as advanced monitoring and tracking research."

The AAO observes that the petitioner and counsel have indicated that the petitioner will be relying heavily on the beneficiary's services and work product and claim that she will have a significant degree of independent involvement in various key company functions. The petitioner claims the beneficiary will "independently identify and develop" media campaigns and she will be "responsible for strategic media relations." Furthermore, counsel reports that the beneficiary "will be solely responsible for the company's Public Relations campaign." Such reliance on the beneficiary's work appears to surpass the expectations of a Level I position, as described above, in which the employee works under close supervision, performing routine tasks that require only a basic understanding of the occupation and has limited exercise of judgment. Here, rather than the beneficiary's work being "monitored and reviewed for accuracy," it is suggested that the petitioner is relying on the beneficiary's work so that it "can be ahead of the curve in [its] business operation strategies and continue to remain successful" and that her work will "enhance the firm's ability to win contracts" as well as being "critical to obtaining and retaining clients and to growing the business" and affecting the company's profits.

Thus, upon review of the assertions made by the petitioner and counsel, the AAO must question the level of complexity, independent judgment and understanding actually required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described by the petitioner and counsel conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, the selected wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

The AAO notes that the prevailing wage of \$36,379 per year on the LCA corresponds to a Level I

for the occupational category of "Public Relations Specialists" for Dallas County (Dallas, Texas).¹⁰ The petitioner stated in the Form I-129 petition and LCA that the offered salary for the proffered position was \$41,000 per year. Notably, if the proffered position were designated as a higher level position, the prevailing wage at that time would have been \$51,230 per year for a Level II position, \$66,061 per year for a Level III position, and \$80,912 per year for a Level IV position.

The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. As such, the petitioner has failed to establish that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted. Thus, even if it were determined that the petitioner overcame the director's ground for denying the petition (which it has not), for this reason also the H-1B petition cannot be approved. It is considered an independent and alternative basis for denial.

The AAO notes that this aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

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

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

¹⁰ For additional information regarding the prevailing wage for public relations specialists in Dallas County, *see* the All Industries Database for 7/2011 - 6/2012 for Public Relations Specialists at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=27-3031&area=19124&year=12&source=1> (last visited March 20, 2013).

part (emphasis added):

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment and knowledge required for the proffered position, along with the petitioner's claimed requirements, are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

For the foregoing reasons, a review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial, the petition could still not be approved for this reason.

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation. For efficiency's sake, the AAO hereby incorporates the above discussion and analysis into the record of proceeding regarding the beneficiary's proposed employment.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. 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 normally the 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 DOL's *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹¹ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Public Relations Specialists."

The AAO reviewed the chapter of the *Handbook* entitled "Public Relations Managers and Specialists," including the sections regarding the typical duties and requirements for this occupational category.¹² However, the *Handbook* does not indicate that "Public Relations Managers and Specialists" comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

The subchapter of the *Handbook* entitled "How to Become a Public Relations Manager or Specialist" states, in part, the following about this occupation:

Education

Public relations specialists typically need a bachelor's degree. Employers usually want candidates who have studied public relations, journalism, communications, English, or business.

For public relations management positions, a bachelor's degree in public relations, communication, or journalism is generally required. Courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing are helpful. In addition, some employers prefer a master's degree in public relations or journalism. In 2010, one-fourth of public relations managers held a master's degree.

Training

¹¹ 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 2012 – 2013 edition available online.

¹² For additional information regarding the occupational category "Public Relations Managers and Specialists," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Public Relations Managers and Specialists, on the Internet at <http://www.bls.gov/ooh/management/public-relations-managers-and-specialists.htm#tab-1> (last visited March 20, 2013).

Public relations specialists typically are trained on the job, either in a formal program or by working closely under more experienced staff members. Entry-level workers often maintain files of material about an organization's activities, skim newspapers and magazines for appropriate articles to clip, and assemble information for speeches and pamphlets. Training typically lasts between 1 month and 1 year. After gaining experience, public relations specialists write news releases, speeches, and articles for publication or plan and carry out public relations programs.

Certification

The Public Relations Society of America offers a certification program for public relations managers that is based on years of experience and on passing an exam. The Accredited Business Communicator credential is also available from the International Association of Business Communicators.

Work Experience

Public relations managers must have several years of experience in a related public relations position. Lower level management positions may require only a few years of experience, whereas directors are more likely to need 5 to 10 years of related work experience.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Public Relations Managers and Specialists, available on the Internet at <http://www.bls.gov/ooh/management/public-relations-managers-and-specialists.htm#tab-4> (last visited March 20, 2013).

The AAO notes that there are discrepancies with regard to the statements made by the petitioner and counsel with regard to the proffered position when reviewed in light of the information provided in the *Handbook's* regarding this occupation.

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the wage level of the proffered position as a Level I position on the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

The *Handbook* reports that certification/credential programs are available for this occupation. However, the AAO notes that there is no indication that the petitioner requires the beneficiary to have obtained any professional certification/credential to serve in the proffered position.

The *Handbook* does not support the assertion that a baccalaureate or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupation. While the *Handbook* states that public relations specialists typically need a bachelor's degree, the

Handbook does not indicate that such a degree must be in a specific specialty directly related to the duties and responsibilities of the position. The *Handbook* continues by indicating that employers usually want candidates who have studied public relations, journalism, communications, English, or business.¹³ Thus, clearly there is a wide-range of disparate fields that employers find to be acceptable. Moreover, the *Handbook* indicates that these employers "want candidates" with such backgrounds, accordingly, it appears that this is a preference for some employers. However, the *Handbook* does not indicate that employers require a degree in these disciplines.

The *Handbook* also discusses public relations management position, however, as previously noted the petitioner designated the proffered position under the occupational category "Public Relations Specialists." The petitioner has not established that the information regarding public relations management positions is relevant to the instant matter, however, the AAO does note that according to the *Handbook*, courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing are helpful for these positions. The courses that the *Handbook* indicates are helpful are in a variety of fields.

The *Handbook* does not conclude that normally the minimum requirement for entry into public relation specialist positions is at least a bachelor's degree *in a specific specialty*, or its equivalent. The *Handbook* indicates that employers accept candidates with backgrounds in a wide-range of disciplines. Thus, the *Handbook* does not support the assertion that the proffered position falls under an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The AAO reiterates that the *Handbook* does not denote that at least a bachelor's degree is normally the minimum requirement for entry into the occupation. However, assuming *arguendo* that the *Handbook* stated such a requirement (which it does not), the AAO reiterates that in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. As previously discussed, in such a case, the required "body of highly specialized knowledge" would essentially be the same. Again, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

¹³ Briefly, the AAO notes that since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish a position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Here, the *Handbook* indicates that "employers usually want candidates who have studied public relations, journalism, communications, English, or business" for public relations specialists positions. Thus, courses of study in a wide-range of disparate fields are considered relevant for entry into the occupation. Notably, these dissimilar courses of study fail to delineate a specific specialty. Thus, the *Handbook's* narrative does not support the assertion that positions in this occupation normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation.

In response to the director's RFE, the petitioner submitted an O*NET OnLine Summary Report for the occupational category "27-3031.00 – Public Relations Specialists" to support the assertion that the proffered position is a specialty occupation. The AAO reviewed the O*NET OnLine Summary Report in its entirety. However, upon review of the of the Summary Report, the AAO finds that it is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation. The Summary Report for public relations specialists has a designation of Job Zone 4.¹⁴ This indicates that a position is grouped with occupations that require considerable preparation. It does not, however, demonstrate that a bachelor's degree in any *specific specialty* is required, and does not, therefore, demonstrate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The O*NET OnLine Help Center provides a discussion of the Job Zone 4 designation and explains that this zone signifies only that most, but not all of the occupations within it, require a bachelor's degree. See O*NET OnLine Help Center at <http://www.onetonline.org/help/online/zones>. Further, the Help Center discussion confirms that a designation of Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite the petitioner's assertion to the contrary, the O*NET information is not probative of the proffered position qualifying as a specialty occupation.

¹⁴ DOL guidance indicates that a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones would be an indication that a wage determination at Level II on the LCA would be proper classification for a position. The occupational category "Public Relations Specialists," has been assigned an O*NET Job Zone 4, which groups it among occupations for which considerable preparation is needed. More specifically, most occupation in this zone "require a four-year bachelor's degree, but some do not." See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 4. Notably, in the instant case, the petitioner designated the proffered position as a Level I position on the LCA. This suggests that the petitioner's academic and/or professional experience requirements for the proffered position would be *less than* the preparation listed for Job Zone 4 occupations.

In response to the RFE, the petitioner submitted a printout from the oedb.org website for an article entitled, "Public Relations Specialists." The AAO reviewed the printout in its entirety. The printout states a degree requirement for public relation specialist jobs, however, it does not indicate that a baccalaureate or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into these positions. The printout reports that "[c]ommunications, journalism, English and public relations are all good majors for the field, but a liberal arts major that is tailored towards English, communicating, writing and even psychology or the social sciences is helpful." Thus, a broad range of disciplines is acceptable for these positions. Notably, the document does not provide any information regarding the source of the information on this particular issue. That is, there is no information to support the conclusions, such as references/citations to statistical surveys, authoritative industry publications, or professional studies. Moreover, the article does not credit anyone with writing the article. Thus, for the reasons discussed, the printout cannot be found to be probative evidence to establish the proffered position as qualifying as a specialty occupation.

The petitioner also submitted an Internet printout from a blog entitled "Flack Me" with an entry entitled "Experience vs. Education: Do You Really Need a Master's Degree for PR?" by Julie Walsh. The document states that "[i]n early 2010, US News named their 50 best careers in 2011, with PR specialist making the selection." The document further states that DOL indicates that public relations jobs are expected to increase between 2008 and 2018. Aside from these specific references, the blog entry does not provide any references or supporting authority (e.g., statistical surveys, authoritative industry publications, professional studies, scholarly research) for the statements presented regarding public relations positions. Moreover, the writer states, "Although employers may appreciate the higher education because it shows dedication and commitment, I would not expect them to give you a raise or promotion just for attaining a degree." Notably, the article does not state the minimum educational requirement for public relations positions. The article does not indicate that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into public relations positions.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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*, or other authoritative source, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. The petitioner did not submit any documentation from the industry's professional association stating that it has made a degree a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or individuals in the industry in support of this criterion of the regulations.

In response to the director's RFE and on appeal, the petitioner and counsel submitted copies of job advertisements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, the AAO finds that the petitioner and counsel's reliance on the job announcements is misplaced.

In the Form I-129 and supporting documents, the petitioner stated that it is a company, established in 1996, that provides advice on international oil, gas, and other energy investments. The petitioner further stated that it has 18 employees and a gross annual income of \$4 million. The petitioner indicated that its net annual income is \$250,000. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 5191.¹⁵ The AAO notes that this NAICS code is designated for "Other Information Services." No description is provided by the U.S. Department of Commerce, Census Bureau website for NAICS code 5191.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Notably, the petitioner and counsel did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the

¹⁵ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. *See* <http://www.census.gov/eos/www/naics/> (last visited March 20, 2013).

employers' actual hiring practices.

Upon review of the documentation, the petitioner fails to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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.

For instance, the advertisements include positions with Southern West Virginia Community and Technical College; Halma Holdings, Inc. (a company that makes products for hazard detection and life protection); Electronic Classroom of Tomorrow (ECOT); Kronos (a company in the computer software industry); FMC Technologies (a company that designs, manufactures and services technologically sophisticated systems and products such as subsea production and processing systems, surface wellhead systems, high pressure fluid control equipment, measurement solutions, and marine loading systems for the oil and gas industry); CNH (agricultural and construction equipment industries firm); Enbridge (a company in the gas transportation industry); and Cylon Energy (a company in the energy and utilities industry). Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Furthermore, the petitioner submitted a job posting placed by staffing firm (Volt Workforce Solutions) for which little or no information regarding the employers is provided. Consequently, the record is devoid of sufficient information regarding the advertising employers to conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations. Again, the petitioner must demonstrate the degree requirement is **common to the industry** in parallel position **among similar organizations** (emphasis added).

Moreover, some of the advertisements do not appear to be for parallel positions. More specifically, the petitioner and counsel submitted a posting by Mandarin Ent., LLC, which requires a degree in political science or mass communication and "5 yrs prog. exp in PR." The petitioner and counsel also provided a posting by FMC Technologies, which requires a degree and "minimum [of] 5 years of experience in public relations and/or communication-related functions." Moreover, the petitioner submitted a posting for Enbridge which requires a degree and 5 to 7 years of experience. Additionally, the petitioner and counsel submitted a job posting by ECOT, which requires candidates to possess a degree and "one to five years of experience and/or training." The petitioner also submitted an advertisement with CNH that requires a degree and 3 to 5 years of experience. A job posting for Cylon Energy requires a degree and 5 to 7 years of experience. In addition, the petitioner and counsel submitted a posting by Kronos, which requires a degree and "[o]ne to two years related work experience – technology or PR agency required." The petitioner and counsel provided a posting for a position with Southern West Virginia Community and Technical College, which requires a degree with "two years recent relevant experience." Moreover, the petitioner and counsel provided a posting that requires a degree and "[t]wo to three years of public relations experience in an agency and/or corporate setting." As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I (entry level) position. The advertised positions appear to be for more senior positions than the proffered

position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Additionally, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, two of the postings (Volt Workforce Solutions and Kronos) state that a bachelor's degree is required, but they do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required.¹⁶ As discussed *supra*, 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 position. Although a general-purpose bachelor's degree 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). Furthermore, the AAO notes that the advertisement for CNH simply states that "[a]dvanced education (University level) in Business, Advertising, Journalism, Marketing or Communications" is required, but does not specify the level of education required (e.g., associate's degree, baccalaureate). Thus, the qualifications listed in the posting do not support a finding that the advertised position requires a *baccalaureate* (or higher degree) in a *specific specialty*, or its equivalent.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.¹⁷

¹⁶ The posting for Volt Workforce Solutions lists the qualifications for the advertised position as including a "BA Required, BA in Marketing or Communications preferred." Thus, a general-degree is acceptable, as obviously a *preference* for a degree in marketing, or communications is not an indication of a *requirement* of a degree in one of these disciplines.

¹⁷ 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 these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *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 public relations specialist for companies that are similar to the petitioner and in the same industry requires a bachelor's or higher degree in a specific specialty, or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

The AAO acknowledges that in the appeal, the petitioner and counsel claim that the proffered position involves complex and/or unique duties. In the instant case, the record of proceeding contains documentation regarding the petitioner's business operations, including marketing/promotional materials, the first page of the petitioner's 2011 income tax return (unsigned); an organizational chart; a client list; a 2008 article written by a managing director of the company on oil and gas interests; various agreements; a table of the petitioner's mandates from 2006 to 2012; printouts of events that the petitioning company has been involved with; printouts from the Internet; client agreements; unaudited financial statements; invoices; and related materials.¹⁸ However, upon review of the record of proceeding, the AAO finds that the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of public relations specialist. That is, the AAO reviewed the record in its entirety and finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. Further, the AAO hereby incorporates into this analysis this decision's earlier comments and findings regarding the information and evidence provided with regard to the proposed duties and requirements and the position that they are said to comprise. As reflected in those earlier comments and findings, the petitioner has not credibly developed or established complexity or uniqueness as attributes of the proffered position that would require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of public relations specialist. Specifically, the petitioner failed to demonstrate how the public relations specialist duties as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the

¹⁸ It appears that the petitioner and counsel suggest that the volume of information submitted is relevant in the determination of whether the petitioner has met its burden of proof in this matter. The AAO reviewed the record in its entirety and notes that the majority of the documentation relates to the petitioner's business operations. However, the evidence submitted fails to establish that the petitioner's proffered position qualifies for the requested classification under the applicable statutory and regulatory provisions. The AAO notes that it is not the volume of documentation that establishes eligibility for the benefit sought, but rather such factors as the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence.

petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even required, in performing certain duties of a public relations specialist position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates that the position is a low-level, entry position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, the wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; her work will be closely supervised and monitored; she will receive specific instructions on required tasks and expected results; and her work will be reviewed for accuracy.

Without further evidence, it is simply not credible that in the instant case the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. A Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁹

Therefore, the evidence of record does not establish that this position is significantly different from other public relations specialist positions such that it refutes the *Handbook's* information to the effect that degrees not in a specific specialty are acceptable for public relations specialist positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than public relations specialist positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner and counsel have indicated that the beneficiary's academic background 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 the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner and counsel claim the "international/global nature of the company and job duties makes the position much more complex and unique." However, they do not sufficiently explain or clarify which of the beneficiary's actual duties, if any, would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Consequently, as the petitioner fails to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent, it cannot be concluded that the petitioner has satisfied the

¹⁹ For additional information on Level IV wage levels, 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/Policy_Nonag_Progs.pdf.

second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In response to the director's RFE, the petitioner submitted a list of its positions and the degrees held by the employees. In addition, in the June 28, 2012 letter, the petitioner states that "[t]he Public Relations duties have historically been handled by the President, [REDACTED] and [REDACTED] Managing Director, during our early years in business." Based upon the supporting evidence provided, it appears that [REDACTED] holds a degree in petroleum engineering and a degree in geology, and that [REDACTED] possesses a degree in geology and a diploma in oil and gas law. Thus, the AAO finds it questionable that the petitioner asserted in its April 16, 2012 letter that the position "requires one who, among other things, has completed the appropriate degree program of study in Public Relations, Media Management, or other very closely related field." The academic credentials of these individuals who have performed the duties in the past do not correspond to the petitioner's stated requirements for the proffered position.

Furthermore, in response to the RFE, the petitioner states that "[i]n the immediate past the Public Relations responsibilities were handled by [REDACTED]." The petitioner claims that [REDACTED] "has an MBA in Entrepreneurship and a BBA in International Business." Notably, Ms. [REDACTED]'s academic credentials do not correspond to the petitioner's claimed requirements for the proffered position as stated in its April 16, 2012 letter ("degree program of study in Public Relations, Media Management, or other very closely related field"). However, as previously discussed, in response to the RFE, the petitioner altered its stated requirements for the proffered position to include "international business" as an acceptable discipline for the proffered position.

Notably, the petitioner did not document evidence to substantiate its claims that these individuals performed the public relations duties. Furthermore, the petitioner did not submit probative evidence to verify the credentials (e.g., degrees, transcripts) of the individuals who currently or in the past have performed the duties of the proffered as requested in the RFE.²⁰ The petitioner did not provide

²⁰ It must be noted for the record that with the appeal, counsel submitted [REDACTED] resume and Form W-2, Wage and Tax Statements. Again, with regard to the evidence submitted on appeal that was encompassed by the director's RFE, the AAO notes that this evidence is outside the scope of the appeal. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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; see also *Matter of Obaigbena*, 19 I&N Dec. 533. If the petitioner had wanted the submitted evidence to be considered, it should have submitted it with the initial petition or in response to the director's request for evidence. *Id.* The petitioner has not provided a valid reason for not previously submitting the evidence. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted for the first time on appeal.

Moreover, even if the AAO were to consider the evidence, it fails to support the petitioner's assertions. More specifically, the AAO notes that a resume represents a claim, rather than evidence to support that claim.

any documentary evidence regarding current or past recruitment efforts for this position

Moreover, the petitioner stated in the Form I-129 petition that it has 18 employees and that it was established in 1996 (approximately 16 years prior to the H-1B submission). Consequently, it cannot be determined how representative the petitioner's claim regarding *one individual over an 16 year period* is of the petitioner's normal hiring practices.

Upon review of the record, the petitioner has not provided probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The AAO acknowledges that in the appeal, the petitioner and counsel claim that the proffered position involves specialized and complex duties. In addition, the AAO notes that it reviewed the documentation provided by the petitioner regarding its business operations and related materials. For example, in the instant case, the record of proceeding contains documentation, including marketing/promotional materials, the first page of the petitioner's 2011 income tax return (unsigned); an organizational chart; a client list; a 2008 article written by a managing director of the company on oil and gas interests; various agreements; a table of the petitioner's mandates from 2006 to 2012; printouts of events that the petitioning company has been involved with; printouts from the Internet; client agreements; unaudited financial statements; invoices; and similar materials. However, upon review of the record of the proceeding, the AAO notes that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, there are inconsistencies in the record of proceeding, as well as a lack of evidence substantiating the

In the instant case, [REDACTED] resume does not indicate that she was ever employed by the petitioner in any capacity. The petitioner also submitted Form W-2, Wage and Tax Statements, issued to the [REDACTED] by the petitioner, which indicate that she was paid \$53,820 in 2009 and \$54,044 in 2010. The petitioner claims that the beneficiary will be paid an annual salary of \$41,000 per year (over \$12,000 less than [REDACTED] was paid). No explanation was provided. It appears that [REDACTED] may have been employed in a more senior or different position.

Further, while the petitioner provided a general statement that that "[i]n the immediate past the Public Relations responsibilities were handled by [REDACTED]" the petitioner failed to provide the job duties and day-to-day responsibilities of [REDACTED] position. The petitioner did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities were the same or related to the proffered position.

petitioner's assertions with regard to the proffered position. As previously discussed, 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. 591-92.

Moreover, the AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupational category of "Public Relations Specialists." The petitioner designated the position as a Level I position (the lowest of four assignable wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation."

Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

A 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 has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1043, *aff'd*, 345 F.3d 683; see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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.