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



U.S. Citizenship
and Immigration
Services

Date: **APR 29 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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner stated that it is a religious community center with three employees, established in 2005. To employ the beneficiary in what it designates as a "Director of Jewish Education" position, the petitioner endeavors 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 it would employ the beneficiary in a specialty occupation position. On appeal, present counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal is whether the petitioner has demonstrated that the 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 following statutory and regulatory requirements.

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered "Director of Jewish Education" position corresponds to Standard Occupational Classification (SOC) code and title 21-2021 Directors, Religious Activities and Education, from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL).

Evidence submitted with the visa petition shows that the beneficiary received a bachelor's degree in education with majors in Bible and Judaic Studies from [REDACTED] in Israel, and a master's degree in social work from the [REDACTED], also in Israel. An evaluation submitted with the visa petition indicates, without analysis, that those degrees are equivalent to a U.S. bachelor's degree in religious studies and education, and U.S. bachelor's and master's degrees in social work.

With the visa petition, previous counsel also submitted, *inter alia*, a letter, dated August 17, 2011, from the petitioner's president, which contains the following description of the duties of the proffered position:

- (1) planning and programming for Sunday School, implying annual and weekly planning of school curriculum, monitoring of educational process, and teacher supervision;
- (2) planning and programming for the after school program, including scheduling of classes, activities and Jewish Education;
- (3) planning and programming for the family education classes, outreach, fundraising and advertisement;
- (4) teaching of Hebrew and Jewish History; and
- (5) development of educational programs for holidays.

The petitioner's president also stated:

The offered position requires the application of knowledge gained through the completion of a bachelor's degree or higher in education or religious education, or a closely related field, or the equivalent

On September 20, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, previous counsel submitted a letter, dated October 17, 2011, from the petitioner's president. That letter states:

[The beneficiary] would be responsible for our entire Jewish educational program, from creating schedules and curricula to finding volunteers able and willing to teach religious studies to members of our center. It is of the utmost importance that the position be filled by someone with a bachelor of education, someone who has been taught specific pedagogical skills, such as curricula creation and implementation. The position requires someone with a religious background, as well, for which [the beneficiary's] unique bachelor of education in bible and Judaic studies is uniquely suited. Someone without an education background in teaching of these areas of study would be unable to properly review and evaluate volunteer teachers to make certain of their ability to implement the curricula she has created and properly educate the students. Further, without such specialized knowledge, she would be unable to know whether the information taught [to] the students was correct or incorrect, particularly in our religious history classes.

The petitioner's president also stated: "... we require educated professionals to plan and develop our programs," "This is a position which requires a bachelor's degree of education in bible and Judaic studies . . .," and "... [the beneficiary] could not possibly do the job we are asking her to do without a bachelor in education"

In his own October 19, 2011 letter, previous counsel reiterated the petitioner's president's assertions, and stated:

The knowledge required for this position is almost exclusively obtained through studies at institutions of higher learning. Specifically, the position requires a bachelor's degree in education with a major or specialization in religious studies because pedagogical skills as they relate to religious studies play a large part in the role the employee will be taking pursuant to this employment. These are skills specifically taught in relation to education degrees and are related directly and closely to the position.

Prior counsel also cited the Specific Vocational Preparation (SVP) rating of "Directors, Religious Activities and Education" from that occupation's O*NET OnLine Summary Report in support of his contention that the proffered position qualifies as a specialty occupation position.

The director denied the petition on November 2, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies for classification as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, present counsel submitted (1) a description of the duties of the proffered position; (2) evidence pertinent to two people other than the beneficiary; (3) a letter, dated December 2, 2011, from present counsel, (4) three letters from other Jewish organizations discussing the educational requirements of a Director of Jewish Education, and (4) four vacancy announcements.

The description of the duties of the proffered position states:

- 1. Educational responsibilities (80%)**
 - A) Sunday school and after-school program (40%)**
 - a) Preparing educational curriculum, conducting teacher's monitoring and supervision for Sunday school and after-school program
 - b) Conducting parent/teacher conference (twice a year) for Sunday school and after school program
 - c) Conducting teachers['] evaluation (every week)
 - d) Conducting teachers' conferences for professional development (twice a year)
 - B) Holidays and special event educational planning (20%)**
 - a) Preparing programs for special events and holidays (New-Years [sic], Hanukah programs, The day of Israeli song, Tu-Bishvat program)
 - b) Hiring team (contractors) to conduct the programs (artists, musicians, etc.)
 - C) Program coordination (40%)**
 - a) Recruiting potential participants
 - b) Organizing variety of educational and cultural workshops for the participants
 - c) Planning cultural and educational trip for Israeli delegation
- 2. Public relationship responsibilities (20%)**
 - A) Developing community relationships within the wide scope of organizations in Jewish community
 - B) Organizing open houses
 - C) Hosting the variety of organizations to conduct their own events (for example, hosting Russian Jewish Community foundation with the charity concert)

The evidence pertinent to people other than the beneficiary relates to [REDACTED] and [REDACTED]

The evidence pertinent to [REDACTED] includes (1) her résumé, (2) a purported translation of a diploma, and (3) a print-out of a bookkeeping program indicating payroll payments made to her by the petitioner from October 2005 to June 2006. It is noted that the translation of the diploma was not accompanied by a copy of the diploma it purported to be a translation of.

The evidence pertinent to [REDACTED] includes (1) her résumé, and (2) a print-out of a bookkeeping program indicating payments made to her by the petitioner from September 2008 to October 20, 2010. [REDACTED] résumé indicates that she has degrees from the [REDACTED], in Israel, [REDACTED] in Worcester, Massachusetts, and [REDACTED] in New York City. It is noted that the petitioner did not submit copies of those degrees.

With his December 2, 2011 letter, present counsel included a table of attachments in which he stated that [REDACTED] worked as Director of Jewish Education for the petitioner from October 2005 to June 2006, and that she had a bachelor's degree in teaching. He further stated that [REDACTED] worked as Director of Jewish Education for the petitioner from September 2008 to October 2010.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns first 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 the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The AAO reviewed the information in the *Handbook* regarding the occupational category "Directors, Religious Activities

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

and Education" and notes that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2010 employment, the May 2010 median annual wage, the projected employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooH/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited April 10, 2013).

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.² The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook*'s support on the issue. In such cases, it

² The AAO notes that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one objective, authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether a particular position qualifies as a specialty occupation.

The AAO observes that the *Handbook* does not indicate that "Directors, Religious Activities and Education" positions 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 full-text of the *Handbook* regarding this occupational category is as follows:

Directors, Religious Activities and Education
(O*NET 21-2021.00)

Plan, direct, or coordinate programs designed to promote the religious education or activities of a denominational group. May provide counseling and guidance for marital, health, financial, and religious problems.

- 2010 employment: **126,000**
- May 2010 median annual wage: **\$36,170**
- Projected employment change, 2010-20:
 - Number of new jobs: **21,200**
 - Growth rate: **17 percent (about as fast as average)**
- Education and training:
 - Typical entry-level education: **Bachelor's degree**
 - Work experience in a related occupation: **1 to 5 years**
 - Typical on-the-job-training: **None**

Id.

The *Handbook* summary data provides "education and training categories" for occupations. The occupational category "Directors, Religious Activities and Education" falls into the group of occupations for which a bachelor's degree (no specific specialty) is the typical entry-level education. The AAO notes that, as evident in the above *Handbook* excerpt on this occupation, the *Handbook* reports only that a bachelor's degree is typical – but not required – for entry into "Directors, Religious Activities and Education" positions and, more importantly, the *Handbook* does not report that bachelor's degrees held by those entering the occupation are limited to and must be in any specific specialty directly related to the occupation. Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupational category.

It is noted that prior counsel cited to the SVP rating of "Directors, Religious Activities and Education" to support his contention that the proffered position qualifies for classification as a specialty occupation. However, the O*NET OnLine Summary Report for "Directors, Religious Activities and Education" does not support the assertion that assignment of an SVP range of "7.0 to

< 8.0" is indicative of a specialty occupation. This is obvious upon reading Section II of Appendix C, Components of the Definition Trailer, in the *Dictionary of Occupational Titles (DOT)*, which addresses the Specialized Vocational Preparation (SVP) rating system.³ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months

³ The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

- 4 Over 3 months up to and including 6 months
- 5 Over 6 months up to and including 1 year
- 6 Over 1 year up to and including 2 years
- 7 Over 2 years up to and including 4 years
- 8 Over 4 years up to and including 10 years
- 9 Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of "7.0 to < 8.0" does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the DOT information is not probative of the proffered position being a specialty occupation.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for knowledge of religious education, but do not establish any particular level of formal, post-secondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively 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).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted (1) four vacancy announcements, and (2)

three letters from people in the petitioner's industry or closely-related industries, for the first time on appeal. In its RFE, the service center stated the following:

[The petitioner has] not provided sufficient evidence to establish that an individual must have a bachelor's degree in a specific field of study in order to perform the duties of the [proffered] position.

* * *

Submit documentation . . . [that] could include, but is not limited to . . . [e]vidence showing that in [the petitioner's] company and in similarly situated businesses in [the petitioner's] industry, a baccalaureate degree in a specific field of study is a standard minimum requirement for the job offered. Attestations to industry standard must be for similar positions among companies in [the petitioner's] industry of comparable size and function.

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).

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 vacancy announcements and letters to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted for the first time on appeal.

Even if the vacancy announcements had been properly submitted, the vacancy announcements do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). One of the vacancy announcements provided is made by a synagogue for a "Director of Education" that will administer a "fully integrated K-12 Religious School." While the announcement states that the position requires a bachelor's degree in education, Jewish studies, or a related field, it cannot be found that the synagogue is a similar organization and that the advertised position is a parallel position.

Another vacancy announcement is for a position as "Jewish Educator" for a Jewish community center in Brooklyn, New York. The announcement states that it *prefers* a bachelor's degree. The AAO observes that a preference is not a minimum requirement, and that even a requirement for an unspecified bachelor's degree would not be a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For both reasons, that vacancy announcement does not indicate

that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another announcement is for an "Education Director" for a synagogue in Philadelphia, and states that a "[master's degree] in Elementary or Jewish Education or a closely-related field (or equivalent experience) is *desired*. Again, a preference is not a minimum requirement.

The final vacancy announcement is for a "Director, Early Childhood Education" to work at a synagogue in Fairfield, Connecticut, in its infant to pre-K Jewish early childhood center. The announcement states that the position requires a minimum of a bachelor's degree in early childhood education. That vacancy announcement appears to indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the four announcements indicates that the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The other three do not. Taken together, they do not support the proposition that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions in organizations in the petitioner's industry that are otherwise similar to the petitioner.⁴

Furthermore, with respect to the letters submitted for the first time on appeal, even if those letters had been properly submitted prior to the appeal being filed, those letters would not have established that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. It is noted that while two of those letters state that the positions described therein normally require at least a baccalaureate degree in Jewish Studies and Education or its equivalent, those two letters do not clarify what the hiring authorities would consider to be equivalent of such an education. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Further, the third letter states that the writer's synagogue held a search for a new director for their Hebrew school, and required, "An advanced degree in Education or directly related field

⁴ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just four job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of director of Jewish education for a religious community center required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the 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.

experience." The writer of that letter did not indicate what amount of field experience would be considered sufficient or indicate that the requisite field experience must be equivalent to a bachelor's degree. Moreover, no documentary evidence was submitted supporting the claims made by each of the writers.

Therefore, the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, 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 establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. The duties of the proffered position (such as preparing an educational curriculum, planning cultural and educational trips, developing community relationships, organizing open houses, and hosting a variety of organizations to conduct their own events) are described in terms of functions with no apparent relationship to a degree in a specific specialty or the equivalent.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While a few related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁵ As was noted above, the record contains evidence pertinent to two people whom present counsel claims the petitioner has employed in the proffered position.

⁵ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer

The evidence pertinent to [REDACTED] and [REDACTED] includes evidence that they once worked for the petitioner, but no evidence that they ever worked in the proffered position. Further, no diplomas or educational transcripts were provided. The only indication that they ever worked in the proffered position is the assertion of present counsel in an index of exhibits attached to his December 2, 2011 letter. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence does not show that [REDACTED] and [REDACTED] worked in the proffered position or that they have the degrees claimed by present counsel. The evidence does not show that either has the specific degree that the petitioner asserts is essential to the proffered position. For all of those reasons, the evidence does not indicate that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, satisfied the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Preparing an educational curriculum, supervising religious education and after-school program teachers, conducting parent/teacher conferences and religious education teacher evaluations, conducting religious education teacher conferences, preparing programs for holiday events, hiring artists and musicians for those events, and organizing educational and cultural workshops, for instance, contain no indication of a nature so specialized and complex that they require knowledge associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The September 20, 2011 stated:

[I]t is not clear how the beneficiary will be relieved from performing non-qualifying functions.

* * *

Therefore, additional evidence is required to establish that the petitioner can sustain an employee performing duties at the level required for consideration as a "specialty occupation" per 8 CFR 214.2(h)(4)(ii).

The petitioner asserts that it is a Jewish community center with three employees. The RFE sought to determine whether those three employees would relieve the beneficiary of the non-qualifying duties necessary to the operation of the center. However, in response to the RFE, the petitioner did not identify its three employees, their job titles, or their duties.⁶ The petitioner provided no evidence pertinent to how the beneficiary will be relieved from performing non-qualifying duties, although such evidence was expressly requested. Such evidence is relevant to the material issue of whether the beneficiary would work in a specialty occupation position.

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). The petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's

⁶ The petitioner's Articles of Organization identify its president, treasurer, and clerk and indicate that the individuals serving in those positions are also directors of the organization. The Articles of Organization also identify an additional director. Whether any of those people are among the three employees the petitioner claims to have, however, is unknown.

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.