



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **AUG 02 2013**

OFFICE: CALIFORNIA SERVICE CENTER

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

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 describes itself as a "Television broadcasting and related activities" firm. To employ the beneficiary in what it designates as a "TV and News Production Director" position, the petitioner endeavors to classify him 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, 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 her 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 before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college

professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a TV & News Production Director position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-2012, Producers and Directors from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in performance and intermedia arts from [REDACTED] and a master's degree in broadcasting from [REDACTED]. An evaluation in the record states that the beneficiary's degrees are equivalent to a U.S. bachelor's degree in film and a U.S. master's degree in broadcasting, respectively.

With the visa petition, counsel submitted a letter, dated March 30, 2012, from the petitioner's Director/President (in Operations)/Treasurer, which contains the following list of the duties of the proffered position:

- (1) Supervise and direct the placement of cameras, lighting, sound system, teleprompter (when used), crewmembers, props, overall background atmosphere, and others;
- (2) Plan and direct framing and composition of image through the camera, camera movement, actor movement, angles and dialogue during filming by giving cues to cast members, as well as plan, select and edit music/sound and special effects during projection;
- (3) Direct and edit live broadcast, television news, documentaries, short films, educational programs and other locally produced shows and programs, utilizing the latest edit software programs (such as Adobe Premiere, Adobe After Effect, Adobe Photoshop, Final Cut Pro) and filming hardware (such as

- Sony DSR-400 Camera, Canon XL-H1, Sony HVR Z-1, Sony DSR-PD170) and basic software programs;
- (4) Develop material of potential interest to viewers and analyze the economic viability of producing such projects;
  - (5) Develop, plan, and consult with Assistant Directors/Producers and crewmembers to determine the best shot and determine which technique is most effective in capturing and conveying concepts and ideas to audience;
  - (6) Consult and work with writers, editors, news announcers, and reporters in the development of the script and make revisions to create final draft for broadcast, as well as determine when to adjust script to production limitations;
  - (7) Direct and produce daily news programs in Korean language covering local, U.S., Korea and international events. Conduct independent research, analyze, interpret and broadcast news received from various sources; supervise the newsroom, coordinate wire service reports, tape or film inserts and stories from news writers and reporters; oversee work of writers, reporters, editors, newscasters, studio and mobile unit production crews; determine what events to cover and how and when they will be presented in a news broadcast; edit scripts and contents to ensure accuracy, fairness, consistency and professionalism for broadcast to general audience;
  - (8) Direct and produce documentaries, interviews, and other recorded programs, with the assistance of Assistant Directors/Producers, and determine how the work should be interpreted and performed;
  - (9) Manage creative and theatrical aspects of production for creation of final products;
  - (10) Confer with managers and Assistant Directors/Producers regarding details of production such as selecting projects, ideas, scripts, and selecting cast, film locations for projects;
  - (11) Select additional set operations personnel such as crewmember, computer operators, choreographers, and technicians as necessary;
  - (12) Supervise, manage and oversee Assistant Directors and Producers and other professionals and staff members in Production Team "A" (news, film, documentary) and Production Team "B" (television advertisement and commercials);
  - (13) Attend regular meetings and confer with management and other departments (engineering, operations, accounting, marketing) to develop and implement new company policies and procedures, marketing efforts, and other corporate matters;
  - (14) Identify, assess, and upgrade equipment required for production as needed;
  - (15) Attend and represent [the petitioner] at conferences and meetings in Seoul, Hawaii, etc.

The petitioner's Director/President (in Operations)/Treasurer also stated:

[The petitioner] would not hire a person for the position of TV and News Production Director who did not have a baccalaureate degree or higher degree in broadcasting, communications, journalism or related field plus broadcast experience.

On July 13, 2012, 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. The director outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, (1) two evaluations of the proffered position; (2) counsel's own letter, dated September 21, 2012; (3) diplomas and transcripts of various people; (4) seven vacancy announcements; and (5) three letters from others in the petitioner's industry.

One of the evaluations provided was prepared by [REDACTED], an associate professor, department of communicology, at the [REDACTED] stated that the proffered position requires a bachelor's degree, but not that it requires a degree in any specific specialty.

The other evaluation provided was prepared by [REDACTED] stated that the proffered position "requires the services of someone with advanced training through a Bachelor's program in Film and Television, Broadcasting, or a closely related field."

In his own letter, counsel cited an unpublished AAO decision for the proposition that the position of film and video director qualifies as a specialty occupation position. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision, other than that the two positions involved have similar job titles. In any event, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel stated that the petitioner is unique in that it is one of only two full-time television stations in Hawaii specializing in Asian programming. Counsel also stated that the petitioner had never previously employed a full-time television and news director, and that, in the past, [REDACTED] and other unidentified people shared the duties of the proffered position. Counsel stated that the petitioner had always hired people with bachelor's degrees for its managerial and professional positions.

Counsel asserted that the beneficiary would supervise and manage the following employees:

- [REDACTED] Assistant Director & Producer; Technical Writer/Editor
- [REDACTED] Assistant Producer; Editor
- [REDACTED] Assistant Director; Writer; Technical Translator
- [REDACTED] Assistant Producer; News Writer
- [REDACTED] News Writer; Reporter
- [REDACTED] → Writer; Reporter

- o [REDACTED] → Copywriter; Editor
- o Four free[l]ance/independent contractors → Writers, Translators

Counsel asserted that [REDACTED] have bachelor's degrees; that [REDACTED] have bachelor's degrees or higher; and that [REDACTED] has a master's degree. Counsel did not assert that [REDACTED] has a college degree.

To corroborate his assertions pertinent to the education of the people whom the beneficiary would supervise, counsel provided transcripts and diplomas. Evidence shows that [REDACTED] has a post baccalaureate certificate in special education, that [REDACTED] has a bachelor of fine arts degree, and that [REDACTED] has a degree in English literature and a master's degree in applied linguistics awarded by foreign universities.

The record contains a diploma showing that [REDACTED] has a bachelor's degree in journalism awarded by a Korean university. [REDACTED] may be the same person as [REDACTED], but that has not been established, nor even alleged. The record contains a diploma showing that [REDACTED] has a bachelor's degree in theology also awarded by a [REDACTED] [REDACTED] may be the same person as [REDACTED], but that has not been established nor even alleged. The record contains no diploma or transcript to confirm counsel's assertion that [REDACTED] has a bachelor's degree or higher. The record contains no diploma or transcript pertinent to [REDACTED]

One of the industry letters provided was prepared by [REDACTED] general manager of [REDACTED] of [REDACTED] who stated:

The [REDACTED] has been in TV broadcasting since [REDACTED] and it has always been our practice to hire an applicant for the position of Television and News Production Director who has, at a minimum, a bachelor[']s degree in communication, broadcasting or [a] similar field . . . .

However, she provided no evidence to corroborate her assertion that her company has that requirement.

Another industry letter was prepared by [REDACTED] in the state of Washington, who stated, "today's industry standards and practices require that we hire an individual with at least a Bachelor's degree . . . ." She further stated, "We do not believe it is possible for directors without a Bachelor's degree, at a minimum, to adequately oversee and supervise other professionals in this industry," and "Our company would not hire an applicant who did not have at least a Bachelor's degree for the position of TV and news director." She did not state that the position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

The third industry letter was prepared by [REDACTED] who stated:

[I]n light of today's industry standards and practices in broadcasting, we would not employ or recruit an individual who did not have a bachelor's or master's degree in the field of broadcasting, journalism or related field, for the position of News Production Director.

He further stated:

I certify that a bachelor's or master's degree in the field of broadcasting journalism or related field is absolutely essential to performing the duties of TV and News Production Directors in broadcasting industry.

The director denied the petition on November 30, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies 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. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the previous submissions are sufficient to demonstrate that the proffered position qualifies as a specialty occupation position. Counsel also submitted an additional letter from an individual in the television broadcasting industry. Counsel submitted portions of the chapter of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* pertinent to Producers and Directors and asserted that the inclusion of producers and director's in DOL's Education and Training Code 4 demonstrates that it is a specialty occupation position. Counsel again cited unpublished AAO decisions as support for the proposition that the proffered position qualifies as a specialty occupation position. The AAO observes, again, that unpublished AAO decisions have no precedential value.

The additional letter is from [REDACTED], and states that "a bachelor's degree in the field of broadcasting, journalism, or related field is a minimum requirement essential to perform the highly complex duties of a Television News Director."

To determine whether the proffered position qualifies as a specialty occupation position, 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 *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 first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, relied upon by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 27-2012, Producers and Directors from O\*NET. The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Producers and Directors," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of producers and directors:

### **What Producers and Directors Do**

Producers and directors are in charge of creating motion pictures, television shows, live theater, and other performing arts productions. They interpret a writer's script to entertain or inform an audience.

### **Duties**

Producers and directors typically do the following:

- Select scripts
- Audition and select cast members and the film or stage crew
- Approve the design and financial aspects of a production
- Ensure that a project stays on schedule and within budget
- Approve new developments in the production

Large productions often have associate, assistant, and line producers who share responsibilities. For example, on a large movie set an executive producer is in charge of the entire production, and a line producer runs the day-to-day operations. A TV show may employ several assistant producers, whom the head or executive producer gives certain duties, such as supervising the costume and makeup team.

Similarly, large productions usually employ several assistant directors, who help the director with tasks such as making set changes or notifying the performers when it is

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<sup>1</sup> 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.

their time to go onstage. The specific responsibilities of assistant producers or directors vary with the size and type of production they work on.

**Producers** make the business and financial decisions for a motion picture, TV show, or stage production. They raise money for the project and hire the director and crew. The crew may include set and costume designers, a musical director, a choreographer, and other workers. Some producers may assist in the selection of cast members. Producers set the budget and approve any major changes to the project. They make sure that the film or show is completed on time, and they are responsible for the way the finished project turns out.

**Directors** are responsible for the creative decisions of a production. They select cast members, conduct rehearsals, and direct the work of the cast and crew. During rehearsal, they work with the actors to help them portray their characters better.

Directors work with designers to build a project's set. During a film's postproduction phase, they work closely with film editors to make sure that the final product comes out the way the producer and director want.

Although directors are in charge of the creative aspects of a show, they ultimately answer to the executive producer.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Producers and Directors," <http://www.bls.gov/ooh/entertainment-and-sports/producers-and-directors.htm#tab-2> (last visited July 24, 2013).

The duties the petitioner attributed to the proffered position are consistent with the duties of Producers and Directors as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a producer or director position as described in the *Handbook*.

On appeal, counsel asserted that the inclusion by DOL of director positions in Education and Training Code 4 indicates that the proffered position qualifies as a specialty occupation position.

Reference to the Foreign Labor Certification Online Wage Library's explanation of Education and Training Codes at <http://www.flcdatacenter.com/TrainingCodes.aspx>, maintained under contract with the DOL, shows that Education and Training Code 4 is defined as:

Work Experience, plus a Bachelor's or Higher Degree  
Most occupations in this category are managerial occupations that require experience in a related non-managerial position.

While inclusion in Education and Training Code 4 indicates that such positions require a minimum of a bachelor's degree, it does not indicate that they require a minimum of a bachelor's degree *in a*

*specific specialty* or its equivalent, and does not, therefore, indicate that a position qualifies as a specialty occupation position by virtue of its inclusion in that Education and Training Code.

The *Handbook* states the following about the educational requirements of producer and director positions:

### **How to Become a Producer or Director**

Most producers and directors have a bachelor's degree and several years of work experience in a related occupation, such as an actor or writer.

#### **Education**

Producers and directors usually earn a bachelor's degree. There are no formal training programs for producers or film directors, but some major in writing, acting, journalism, or communication while in college. Some producers earn a degree in business, arts management, or nonprofit management.

Many stage directors complete a degree in theater, and some go on to receive a Master of Fine Arts (MFA) degree. Classes may include directing, playwriting, and set design, as well as some acting classes. The National Association of Schools of Theater accredits more than 150 programs in theater arts.

#### **Work Experience**

Producers and directors usually have several years of work experience in a related occupation. Many directors begin as actors, writers, film editors, or choreographers, and over the years they learn about directing. Many begin as assistants to successful directors on a film set. For more information, see the profiles on actors, writers and authors, film and video editors and camera operators, or dancers and choreographers.

In nonprofit theaters, most aspiring directors begin as assistant directors, a position that is usually treated as an unpaid internship.

Producers might start out working in a theatrical management office, as a business manager, or as an assistant or another low-profile job in a TV or movie studio. Some were directors or worked in another role behind the scenes of a show or movie.

#### **Advancement**

As a producer's or director's reputation grows, he or she may work on bigger and more expensive projects.

### Important Qualities

**Communication skills.** Producers and directors must coordinate the work of many different people to finish a production on time and within budget.

**Creativity.** Because a script can be interpreted in different ways, directors must decide how they want to interpret it and then how to physically represent the script's ideas.

**Leadership skills.** A director instructs actors and helps them portray their characters in a believable manner.

**Management skills.** Producers must find and hire the best director and crew for the production and make sure that all involved do their jobs effectively and efficiently.

*Id.* at <http://www.bls.gov/ooh/entertainment-and-sports/producers-and-directors.htm#tab-4> (last visited July 24, 2013).

The *Handbook* states that most producers and directors have a bachelor's degree. It also states, however, that no formal training programs exist for producers or film directors. The *Handbook* states that some major in writing, acting, journalism, or communication. It further states that some producers earn a degree in business, arts management, or nonprofit management, and that many directors complete a degree in theater or a master of fine arts degree.

That *most* producers and directors have a bachelor's degree does not indicate that it is a minimum requirement for such positions.<sup>2</sup> Further, even as to those producer and director positions that may require a bachelor's degree, the *Handbook* does not indicate that they require a minimum of a bachelor's degree *in a specific specialty* or its equivalent. The *Handbook* does not, therefore, support the proposition that producer and director positions, as a category, qualify as specialty occupation positions.

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding

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<sup>2</sup> For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of producers and directors have a bachelor's degree, it could be said that "most" producers and directors have such a degree. It cannot be found, therefore, that a degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act.

of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some producer and director positions do not require such a degree.

Further still, 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 a range of knowledge of film direction and production, but do not establish any particular level of formal, postsecondary 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 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Counsel did submit four industry letters that stated requirements for producer and director positions.

One writer stated that his company had always hired television news and production directors with a minimum of a bachelor's degree in "communication, broadcasting or a similar field," but provided no evidence to corroborate that assertion.

Another industry letter stated that "We do not believe it is possible for directors without a Bachelor's degree, at a minimum, to adequately oversee and supervise other professionals in this industry," and "Our company would not hire an applicant who did not have at least a Bachelor's degree for the position of TV and news director." She did not state that the position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Another stated that "a bachelor's or master's degree in the field of broadcasting journalism or related field is absolutely essential to performing the duties of TV and News Production Directors in [the] broadcasting industry."

The fourth letter states that "a bachelor's degree in the field of broadcasting, journalism, or related field is a minimum requirement essential to perform the highly complex duties of a Television News Director."

Three of the industry letters state that television and news producers and director positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. That assertion cannot be reconciled with the evidence from the *Handbook* that, although it states that most producers and directors have bachelor's degrees, implies, thereby, that some do not. Further, the *Handbook* makes clear that, even for those positions requiring a bachelor's or higher degree, degrees in writing, acting, journalism, communication, business, arts management, nonprofit management, or fine arts may suffice.

Another letter states that producer and director positions require a minimum of a bachelor's degree, but without specifying that the requisite degree must be in any specific specialty. Even that position cannot be squared with the implication of the *Handbook* that some producers and directors do not have a bachelor's degree in any subject.

None of the letters are accompanied by evidence corroborating their claims. Furthermore, no explanation was given for one letter's inconsistent statement that a bachelor's degree, without a specific specialty, is sufficient for producer and director position. Thus, the four letters from others in the petitioner's industry will be accorded very little evidentiary weight.

Similarly, one of the position evaluations submitted reaches the conclusion that TV and News Production Director positions require the services of someone with advanced training obtained through a bachelor's degree program in Film and Television, Broadcasting, or a closely related field. The other position evaluation concludes that such positions require a minimum of a bachelor's degree, though not in any specific specialty. Neither conclusion can be reconciled with the information from the *Handbook*, and counsel did not attempt to reconcile them with the *Handbook*

evidence or to address the fact that they are at odds with the *Handbook* information. The AAO will accord those evaluations very little evidentiary weight.

The petitioner also submitted seven vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Newscast Director for TV station [REDACTED] stating a preference for a bachelor's degree in TV production but stating that "experience may be substituted for education." That announcement also states that the position requires "A minimum of two years major-market Television direction experience or three years equivalent medium market experience or equivalent combination of education and experience";
2. News Producer for [REDACTED] requiring a degree in journalism, broadcast news, or a related field and two years news-related experience;
3. Producer/Director for [REDACTED] Educational Telecommunications requiring a "Bachelor [sic] degree in broadcasting, radio/TV communications, or related field or equivalent training in production techniques essential and/or minimum of four years experience in television production";
4. Producer/Director for [REDACTED] Sports requiring a "Bachelor's degree (B.A.) from four-year college/university or equivalent experience";
5. Video Producer for the [REDACTED] requiring a bachelor's degree in communications or in multi-media or broadcast journalism, and three to five years of related professional experience;
6. Broadcast Producer for [REDACTED] requiring a bachelor's degree in communication or journalism or an equivalent combination of education and experience in public affairs broadcasting or print journalism;
7. Play-By-Play/Broadcast Director for an unidentified company requiring a bachelor's degree in broadcasting or equivalent experience in television/radio production or broadcasting with one to three years of practical experience including post-entry level experience in video processing or image processing and experience in channel and broadcast operations.

The vacancy announcements provided, however, do not demonstrate that a minimum of a bachelor's degree in a specific specialty or its equivalent is a requirement for positions parallel to the proffered position.

Specifically, the first vacancy announcement states a preference for a specific degree, but not that the specific degree, or any degree, is a minimum requirement for the position announced. Clearly, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for the position announced.

Further, the first, third, fourth, sixth, and seventh vacancy announcements indicate that experience may be substituted for the otherwise requisite education, but do not indicate what type and amount of experience the hiring authority would consider to be equivalent to a bachelor's degree. As such, they contain no indication that the education substituted must be equivalent, within the meaning of the pertinent regulations, to a bachelor's degree.<sup>3</sup> Those vacancy announcements do not indicate that the positions they announce are specialty occupation positions. They contain no indication, therefore, that the proffered position, by virtue of a similar job title or similar duties, qualifies as a specialty occupation position.

Further still, although all of the companies that posted those vacancy announcements appear to be within the petitioner's industry, they have not been demonstrated to be similar to the petitioner in terms of size or complexity of operations. They have not been demonstrated, therefore, to be relevant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which relates to positions in similar organizations.

Yet further, the first, second, fifth, and seventh vacancy announcements seek candidates with experience, whereas the petitioner stated, on the LCA, that the proffered position is a Level I position, that is, an entry level position for an employee who has only basic understanding of the occupation.<sup>4</sup> Those positions are not directly relevant, therefore, to whether parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, and not directly relevant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from seven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>5</sup>

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<sup>3</sup> See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

<sup>4</sup> See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>5</sup> 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 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").

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

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties 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 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 a few related courses may be beneficial, or even required, in performing certain duties of the proffered 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.

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

Further, as was observed above, the LCA submitted in support of the visa petition is approved for a Level I producer or director, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of television production and direction. This does not support the proposition that the proffered position is so complex or unique that it can only be

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As such, even if the job announcements supported the finding that producer and director positions for firms similar to and in the same industry as the petitioner 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.

performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some producer and director positions do not require such a degree.

As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be 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 position.<sup>6</sup>

In the letter submitted with the visa petition, the petitioner's Director/President (in Operations)/Treasurer stated that the petitioner would not hire someone without a bachelor's degree in broadcasting, communications, journalism, or a related field for the proffered position.

Counsel stated, in his September 21, 2012 letter, that the petitioner has never previously had a full-time television and news director, but that [REDACTED] and others had previously shared the duties of director and producer. Evidence in the record shows that [REDACTED] has a post baccalaureate degree in special education and that [REDACTED] has a degree in English literature and a master's degree in applied linguistics. No evidence in the record suggests that they or anyone else who performed the duties of the proffered position has a minimum of a bachelor's degree in a specific specialty closely related to the proffered position, or its equivalent. Although the petitioner has existed since 1982, the record does not indicate that anyone with a minimum of a bachelor's degree in a specific specialty closely and directly related to the duties of the proffered position, or its equivalent, has ever performed the duties of the proffered position for the petitioner. The petitioner has not, therefore, satisfied the criterion at 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

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<sup>6</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in 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").

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. The duties of the proffered position, such as supervising filming, planning image composition, producing, directing, and editing various productions, supervising subordinates, representing the petitioner at conferences, etc. have not been shown to be so specialized and complex that they are usually associated with 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 producer and director positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I producer and/or director position, a position for a beginning level employee with only a basic understanding of television production and/or direction. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to television production and direction, especially as the *Handbook* indicates that some producer and director positions require no such degree.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

(b)(6)

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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.