

(b)(6)

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



U.S. Citizenship  
and Immigration  
Services

DATE: **AUG 02 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:

[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

for

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 an Early Child Care Education firm. To employ the beneficiary in what it designates as a Teacher 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, 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 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 teacher position, and that it corresponds to Standard Occupational Classification (SOC) code and title 25-2011, Preschool Teachers, Except Special Education from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level II position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in education from the [REDACTED]. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. "bachelor's degree."

Counsel also submitted a letter, dated November 22, 2011, signed by the petitioner's director, which contains the following description of the duties of the proffered position:

- Teach students skills such as color, shape, number and letter recognition, personal hygiene, and social skills.
- Provide a variety of materials and resources for students to explore, manipulate and use, both in learning activities and in imaginative play.
- Fulfill administrative duties for the class including keeping attendance, completing accidents reports, maintaining classroom supply inventories, etc.
- Establish and enforce rules for behavior, and procedures for maintaining order.
- Gear the program to the needs of the individual children with concerns for his interests, special needs, special talents, and individual style and pace of learning.
- Observe and evaluate students' performance, behavior, social development, and physical health.
- Meet with parents and guardians to discuss their children's progress and needs, determine their priorities for their children, and suggest ways that they can promote learning and development.

- Maintain accurate and complete records as required by law, district policy and administrative regulation.
- Identifies student needs and cooperates with other professional staff members in assessing and helping students solve health, attitude, and learning problems.
- Participates cooperatively with the appropriate administrator to develop the method by which the teacher will be evaluated in conformance with guidelines.

Neither that letter nor any other evidence initially submitted with the visa petition states that the proffered position has an educational requirement.<sup>1</sup>

On May 1, 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, the petitioner submitted (1) seven vacancy announcements; (2) a copy of a portion of the District of Columbia Municipal Regulations; and (3) a list of duties on the petitioner's letterhead.

The portion of the District of Columbia Municipal Regulations provided is Title 29, Chapter 3, and relates to Child Development Facilities. A portion of Section 315.4, pertinent to requirements for teachers in Child Development Facilities, is highlighted, apparently to bring it to the attention of USCIS. Section 315.4 states:

Teachers at child development centers shall be qualified by meeting one (1) of the following:

- (a) A bachelor's degree in early childhood education or a related field with a minimum of fifteen (15) hours in early childhood education courses;
- (b) Two (2) or more years of college, including at least fifteen (15) hours of early childhood education courses, and one (1) year of experience in a child development facility;
- (c) A high school diploma or its equivalent and three (3) Years of experience as a teacher or assistant teacher in a child development center, plus, on or before July 1, 1977, nine (9) college credit hours in early childhood education from an accredited college or university; or

---

<sup>1</sup> That letter is not on the petitioner's letterhead, but contains the following heading: "*Please transfer to your company's letterhead.*" That heading suggests that the list of duties may have been submitted to the petitioner's director, rather than generated by her.

- (d) Experience as a teacher or assistant teacher in a licensed child development center; Provided, that he or she has been awarded a child development associate credential.

The list of duties is headed, "Job Description of Pre School Teacher at The Child Development [REDACTED] The duties listed are:

- Provide care and nurturing of preschool children: during arrival and departure, during meals, bathroom, playtime and naptime (1 hour)
- Prepare materials for lessons (30 mins.)
- Preschool instruction: Language Arts, Math, Social Skills, Science, (4 hours)
- Meet with parents and guardians to discuss their children's progress and needs, determine their priorities for their children, and suggest ways that they can promote learning and development. (1 hour)
- Observe and evaluate students' performance, behavior, social development, and physical health. (30 mins)

The director denied the petition on October 23, 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.

On appeal, counsel provided: (1) evidence pertinent to District of Columbia legislation regarding preschool facilities, (2) a news article pertinent to that legislation, (3) a printout of content of the District of Columbia Office of State Superintendent of Education, and (4) four vacancy announcements.

In his brief, counsel stated:

The Pre-K Enhancement and Expansion Amendment Act of 2008 provided funds for the upgrading of preschool education, both in school capability and workforce qualifications. Funds were allotted to be endowed as grants to enable the preschool teachers of Washington DC to obtain their degrees. [Parenthetical omitted.]

In explaining the thrust of the legislation, [REDACTED] stated that the government aims to achieve the complete upgrading of the qualifications of its preschool teachers. By the year 2014, preschool teachers would all be bachelor's degree holders, and teacher assistants would be holders of at least an associate degree (See attached Exhibit "D"- News Report).

Materials provided do indicate that grants and scholarships would be made available to pre-kindergarten teachers and prospective teachers. The news article provided does not state that the mayor asserted that all preschool teachers in the District of Columbia would have bachelor's degrees

by 2014. It states, ". . . the mayor . . . wants all pre-kindergarten teaching staff in the district to have a bachelors or associate degree by 2014 . . . ." Further, counsel did not even allege that the goal of the district is for its teachers to have a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Further still, the record contains no evidence that even the more modest goal of requiring a minimum of an associate's degree in any subject was ever legislated. The printout from the D.C. Office of the State Superintendent of Education discusses the requirements for teaching positions in the District of Columbia, but states: "(Note: Public charter and private school teachers and administrators are not mandated by DC law to hold a state license . . .)."

As a preliminary matter, the AAO observes that the petitioner has never stated that the proffered position has any educational requirement at all. The petitioner has never stated that it requires a minimum of a bachelor's degree in early childhood education or its equivalent, or in some other specific specialty, or a bachelor's degree or equivalent without a mandated specific specialty, or even that the proffered position requires an associate's degree. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

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 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 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* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 25-2011, Preschool

---

<sup>2</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.

Teachers, Except Special Education from O\*NET. The *Handbook* describes the occupation of "Preschool Teachers" as follows:

### **What Preschool Teachers Do**

Preschool teachers educate and care for children, usually ages 3 to 5, who have not yet entered kindergarten. They explain reading, writing, science, and other subjects in a way that young children can understand.

### **Duties**

Preschool teachers typically do the following:

- Prepare children for kindergarten by introducing concepts they will explore further in kindergarten and elementary school
- Work with children in groups or one on one, depending on the needs of children and the subject matter
- Plan and carry out a curriculum that targets different areas of child development, such as language, motor, and social skills
- Organize activities so children can learn about the world, explore interests, and develop talents
- Develop schedules and routines to ensure children have enough physical activity, rest, and playtime
- Watch for signs of emotional or developmental problems in children and bring problems to the attention of parents
- Keep records of the students' progress, routines, and interests, and keep parents informed about their child's development

Preschool teachers use play to teach children about the world. For example, they use storytelling and rhyming games to teach language and vocabulary. They may help improve children's social skills by having them work together to build a neighborhood in a sandbox or teach science and math by having children count when building with blocks.

Preschool teachers work with children from different ethnic, racial, and religious backgrounds. Teachers may include multicultural topics in their lessons to teach children about people of different backgrounds and cultures.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed. "Preschool Teachers," <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-2> (last visited July 31, 2013).

The duties the petitioner's director either attributed to the proffered position herself or acknowledged when it was submitted to her are consistent with the duties of preschool teachers as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a preschool teacher position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of preschool teacher positions:

### **How to Become a Preschool Teacher**

Education and training requirements vary based on settings and state regulations. They range from a high school diploma and certification to a college degree.

#### **Education**

In childcare centers, preschool teachers generally are required to have at least a high school diploma and a certification in early childhood education. However, employers may prefer to hire workers with at least some postsecondary education in early childhood education.

Preschool teachers in Head Start programs must have at least an associate's degree. However, by 2013, at least 50 percent of preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field. As a result, Head Start programs may prefer to hire workers with a bachelor's degree. Those with a degree in a related field must have experience teaching preschool-age children.

In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

#### **Certification**

Some states and employers require preschool teachers to have a nationally recognized certification such as the Child Development Associate (CDA) offered by the Council for Professional Recognition. Requirements to earn the CDA include a high school diploma, experience in the field, and coursework. For more information about the CDA, contact the Council for Professional Recognition.

Some states recognize the Child Care Professional (CCP) designation offered by the National Early Childhood Program Accreditation. Requirements to earn the CCP include a high school diploma, experience in the field, and continuing education

courses. For more information about the CCP, contact the National Early Childhood Program Accreditation.

### **Work Experience**

Some states require preschool teachers to have some work experience in a childcare setting. The amount of experience necessary varies by state. Preschool teachers often start out as childcare workers or teacher assistants. For more information, see the profiles on childcare workers or teacher assistants.

### **Licenses**

Many states require childcare centers to be licensed. To meet licensure requirements, their staff must pass a background check, have a record of immunizations, and meet a minimum training requirement.

In public schools, preschool teachers must be licensed to teach early childhood education, which covers preschool through third grade. Requirements vary by state, but they generally require a bachelor's degree and passing an exam to demonstrate competency. Most states require teachers to complete continuing education credits to maintain their license.

### **Advancement**

Preschool teachers can work their way up from assistant teacher to teacher to lead teacher (who may be responsible for the instruction of several classes) to director of the preschool. For more information, see the profile on preschool and childcare center directors. Those with a bachelor's degree frequently are qualified to teach kindergarten through grade 3, in addition to preschool. Teaching positions at these higher grades typically pay more.

### **Important Qualities**

**Communication skills.** Preschool teachers need good communication skills to tell parents and colleagues about students' progress. They need good writing and speaking skills to convey this information effectively.

**Creativity.** Preschool teachers must plan lessons that engage young students. In addition, they need to adapt their lessons to suit different learning styles.

**Instructional skills.** Preschool teachers need to be organized and able to explain difficult concepts in terms young children can understand.

**Patience.** Working with children can be frustrating, and preschool teachers should be able to respond calmly to overwhelming and difficult situations.

**People skills.** Preschool teachers must understand children's emotional needs and be able to develop good relationships with parents, children, and colleagues.

*Id.* at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4> (last visited July 31, 2013).

The *Handbook* contains no indication that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position offered in this case. Although it states that some preschool teacher positions require a bachelor's degree, or even a bachelor's degree in early childhood education, a specific specialty, it makes equally clear that other preschool positions do not require a specialized bachelor's degree, or even a minimum or any bachelor's degree at all. It states, "In childcare centers, preschool teachers generally are required to have a least a high school diploma and a certification in early childhood education." It further states that requirements for certification include a high school diploma, experience in the field, and coursework, but does not suggest that certification is the equivalent of a bachelor's degree in a specific specialty.

Further, the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who performs moderately complex tasks that require limited judgment. 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 II 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, notwithstanding that the *Handbook* makes clear that some preschool teacher positions do not require such a degree.

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 a range of knowledge, 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, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did submit 11 vacancy announcements in support of its assertion that a specific bachelor's degree requirement is common to the petitioner's industry in parallel positions among similar organizations. The petitioner submitted advertisements for the following positions posted on the Internet:

1. Lead Early Childhood/Preschool Teachers for the [REDACTED] requiring "a degree (BA/BS or [Child Development Associate]) in Early Childhood education/child development";
2. Early Childhood Teachers (PS/PK/K) [preschool, prekindergarten, kindergarten] for [REDACTED] stating: "Bachelor's degree from a competitive college or university required. Concentration or advanced degree in early childhood or literacy development preferred";
3. Lead Teacher for [REDACTED] requiring a bachelor's degree;<sup>3</sup>
4. Preschool Age Teacher for [REDACTED] stating:  
"[Must have] Completed a Bachelors degree at an accredited college or university in early childhood education, elementary education, or related field. If the degree is in an unrelated field, must possess 15 semester hours of approved course work in or early childhood education elementary education, or equivalent."
5. Preschool Teacher for [REDACTED] stating  
"Bachelors degree (Required) Bachelor's degree in content area (Preferred)";

---

<sup>3</sup> That vacancy announcement also contains information pertinent to Infant-Toddler Master Teacher, Assistant Teacher, and Teacher Aide positions, but a portion pertinent to lead teacher positions was highlighted, apparently to draw attention to it, which suggests that the petitioner intended to rely on that portion.

6. Preschool Teacher for the [REDACTED] requiring a minimum of an associate's degree in early childhood education or equivalent Maryland State Department of Education certification;
7. Preschool Teacher for the [REDACTED] requiring "Any combination of education and experience equivalent to a Bachelor's degree in e . . . related field."<sup>4</sup>
8. Another vacancy announcement for [REDACTED] [preschool, prekindergarten, kindergarten] for DC Prep, again stating: "Bachelor's degree from a competitive college or university required. Concentration or advanced degree in early childhood or literacy development preferred";
9. Early Head Start Teacher for [REDACTED] requiring a bachelor's degree in early childhood education, child development, or a related field;
10. Preschool Teacher for [REDACTED] requiring a minimum of a bachelor's degree in early childhood education;
11. Preschool Teacher for [REDACTED] requiring a bachelor's degree;

The vacancy announcements submitted, however, do not suggest 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 parallel positions that in similar organizations in the petitioner's industry.

The first, ninth, and tenth vacancy announcements do require a minimum of a bachelor's degree in a specific specialty or its equivalent for preschool teacher positions. Those three vacancy announcements out of eleven provided, however, are insufficient to show that such a requirement is common to the petitioner's industry.

Because a portion of the seventh vacancy announcement was not provided, the AAO is unable to determine whether that vacancy announcement would have supported the proposition 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 parallel positions in similar organizations in the petitioner's industry.

The sixth vacancy announcement only requires an associate's degree in early childhood education or state certification. Neither is equivalent to a minimum of a bachelor's degree in a specific specialty or its equivalent. That vacancy announcement does not support the proposition 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 parallel positions that in similar organizations in the petitioner's industry.

The third and eleventh vacancy announcements require a bachelor's degree, but not a degree in any specific specialty. They do not support the proposition that a requirement of a bachelor's or higher

---

<sup>4</sup> That printout was formatted such that some portions of the announcement did not print. The ellipsis is provided to show where some text is apparently missing.

degree in a specific specialty, or its equivalent, is common to the petitioner's industry in parallel positions that in similar organizations in the petitioner's industry.

The second, fifth, and eighth vacancy announcements state a requirement of a bachelor's degree, and a *preference* for a degree in a specific specialty. A preference is not a minimum requirement. Those vacancy announcements 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 the petitioner's industry in parallel positions that in similar organizations in the petitioner's industry.

The fourth vacancy announcement appears to require a minimum of a bachelor's degree in an early childhood education or its equivalent, but adds that a degree in an unrelated field is a sufficient educational qualification if it includes 15 credit hours of instruction in early childhood education. An unrelated bachelor's degree with 15 credit hours of instruction in early childhood education has not been shown to be equivalent to a bachelor's degree in early childhood education. That vacancy announcement does not support the proposition 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 parallel positions that in similar organizations in the petitioner's industry.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry 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 11 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>5</sup>

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)

---

<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").

As such, even if the job announcements supported the finding that the position of preschool teacher for organizations similar to 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 may 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.

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 so complex or unique compared to other preschool teaching positions such that it can only be performed by a specifically degreed individual, notwithstanding the *Handbook's* information to the effect that not all such positions require a specialized bachelor's degree, or any college degree at all. 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 record contains no evidence pertinent to anyone the petitioner has previously hired to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>6</sup>

---

<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

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. The duties of the proffered position, such as taking attendance, maintaining classroom supplies, preparing lessons, caring for and instructing preschool children, observing and evaluating students, meeting with parents to discuss individual needs, etc., do not demonstrate a nature 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. The description of the proposed duties does not demonstrate that they are more specialized and complex than the duties of preschool teacher 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).

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, except to note that, in any event, the petitioner did not submit sufficient evidence to establish that the beneficiary's degree is the equivalent of a U.S. bachelor's degree *in a specific specialty*. Specifically, the submitted evaluation states that the beneficiary's degree earned in the Philippines is equivalent to a U.S. "bachelor's degree"; however, it does not specify a specific specialty that the degree is equivalent to. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

---

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").

(b)(6)

*NON-PRECEDENT DECISION*

Page 17

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.