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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 30 2013**

OFFICE: CALIFORNIA 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: SELF-REPRESENTED

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", with the word "for" written below it.

Ron Rosenberg

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 legal services firm. To employ the beneficiary in what it designates as a bilingual translator 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, the petitioner asserts that the director's basis for denial was erroneous and contends 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 the petitioner'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 bilingual translator position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-3091, Interpreters and Translators 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, the petitioner submitted evidence that the beneficiary received a bachelor's degree in literature from [REDACTED] in China and a master's degree in teaching English to speakers of other languages from the University of Southern California.

The petitioner also submitted (1) copies of vacancy announcements the petitioner placed for translator positions; (2) a vacancy announcement placed by another company; (3) a letter, dated March 15, 2012, from the petitioner's owner; and (4) an undated signed declaration of the petitioner's owner.

One of the petitioner's vacancy announcements was placed in a newspaper. The other vacancy announcement was posted on greencard4us.com, the petitioner's website. Each of those vacancy announcements states: "Bilingual Translator (Mandarin and English) for [the petitioner], Master in English or English Education. Send Rsm to [the petitioner's address]."

In her March 15, 2012 letter, the petitioner's owner stated that the beneficiary has experience translating legal documents and that her firm requires translation services. The petitioner's owner stated the following as the duties of the proffered position:

- Helping attorneys to prepare for hearing[s], mediations, trials and meetings particularly with clients from the Chinese speaking community (10% of time)

Level of responsibility high; at least Bachelor degree or foreign equivalent of bachelor degree.

- Working with attorney in communicating and corresponding with the Chinese speaking clients, translating legal documents between Chinese and English languages under attorney's supervision; translating supporting documents in Chinese to support EB-5 investment immigration petitions, L1A transnational executive non-immigrant visa petitions and EB-1 alien of extraordinary ability immigration petitions.

Level of responsibility high; at least Bachelor degree or foreign equivalent of bachelor degree. (35% of time) Any mistake in the translation could cause inconsistency in the evidence and may cause the denial of the case.

- Interpreting English legal documents to clients to facilitate clients' case processing and accompany Chinese speaking clients at interviews as interpreter; (30% of time)
Level of responsibility high; at least Bachelor degree or foreign equivalent of bachelor degree. Any mistake in the translation could cause inconsistency in the evidence and may cause the denial of the case. The quality of the translator is at strict scrutiny by the USCIS, by the supervising attorney and the translation monitor.
- Working with Chinese speaking clients to gather documents necessary for case processing and translate the documents between Chinese and English if necessary; (15% of time)
Level of responsibility high; at least Bachelor degree or foreign equivalent of bachelor degree.
- Performing other translation and/or interpretation job duties as assigned by attorney. (10% of time)
Level of responsibility high; at least Bachelor degree or foreign equivalent of bachelor degree.

As to the degree required, the petitioner's owner stated, "For imperative reasons, petitioner feels it is obligated to require that a qualified individual have at least a bachelor's degree in English language or related fields."

The petitioner's owner's undated declaration states:

Only highly educated translators can provide high quality assistance to attorneys. Thus, this translator position is a special senior position which requires at least a Bachelor's Degree in liberal arts.

On July 17, 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) a copy of another vacancy announcement the petitioner placed for a translator position; (2) three additional vacancy announcements placed by other firms; (3) an undated letter from [REDACTED] an attorney at another [REDACTED] California law firm; (4) an evaluation of the proffered position, dated July 27, 2012, prepared by [REDACTED] a professor in the Department of Educational Theory and Practice at the [REDACTED] (5) a letter, dated August 14, 2012, from the petitioner's owner; (6) documents pertinent to some of the petitioner's employees, and (7) documents to serve as examples of some of the types of translations to be performed in the petitioner's business.

The additional vacancy announcement placed by the petitioner was placed in a newspaper and is identical to the previous newspaper vacancy announcement provided.

In her undated letter, [REDACTED] stated that her firm also specializes in serving Asian clients, and requires translators. She stated that all of her firm's translators have "at least a Bachelor degree in liberal arts"

Professor Meskill's July 27, 2012 evaluation states:

It is typical for a law firm serving the Asian community with high demands for translation services to hire a Bilingual Translator or someone in a similar professional position, and require the minimum attainment of a Bachelor's Degree in Translation and Interpretation, English Language and Literature, or a related area for the position.

In her August 14, 2012 letter, the petitioner's owner stated: "The Service has requested evidence additional information to evidence that the . . . beneficiary is qualified to perform in the [proffered position] for the [petitioner]."

The AAO observes that the RFE did not, in fact, ask for additional evidence pertinent to the beneficiary's qualifications but, rather, evidence that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. Evidence pertinent to the beneficiary's qualifications, with no direct relevance to whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, need not, and will not, be addressed.

The petitioner's owner also reiterated the duties previously described, stated that the petitioner requires translators who are fluent in Chinese, and cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, apparently as evidence that such positions qualify as specialty occupation positions.

In commenting on the duties of the proffered position, the petitioner's owner stated:

The job duties listed above indicate that the [proffered] position is a combination of many different jobs. Since each of the component jobs making up the petitioner's [proffered] position requires the attainment of at least a bachelor's degree, it logically follows that the [proffered position] also requires that degree.

The petitioner's owner did not elaborate on the various positions of which she asserts that the proffered position is a composite, or the degrees that those positions require. The AAO observes that, if the position is other than an interpreter and translator position, as stated on the LCA, then the LCA does not correspond to the visa petition, and the visa petition would be deniable on other grounds.

The petitioner's owner quoted from [redacted] discussing a Colorado Court of Appeals case as reported in the [redacted] in which poor translation services allegedly resulted in the court overturning a lower court decision. The petitioner's owner stated:

That is my reason why [the petitioner] always require[s] that our Bilingual Translators possess, at minimum, a bachelor's degree in English, or its equivalent, and must be fluent in English and Chinese languages.

She further stated: "[The petitioner] has never hired any translator who does not have a Bachelor [sic] degree in English or related majors of study since its establishment in 2004." She identified [redacted] as the only people currently working as bilingual interpreters for the beneficiary, and stated that they have a master's degree in English education, a bachelor's degree in liberal arts, and a bachelor's and master's degree in English language, respectively. Documents submitted corroborate that Jun Wang has a bachelor's degree in law and a master's degree in teaching English as a second language, and that [redacted] has an otherwise unspecified bachelor of arts degree. No such documents were submitted pertinent to [redacted]

The petitioner also submitted documents pertinent to some of the petitioner's other employees, that is, those who do not work in the proffered position. Those documents are of no apparent relevance to whether the proffered position qualifies as a specialty occupation, and will not be further addressed.

The director denied the petition on August 29, 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, the petitioner's owner cited an unpublished AAO decision in which the AAO determined that a particular interpreter/translator position qualified as a specialty occupation position. The petitioner's owner also asserted, in various iterations, that translations in general, or perhaps the particular translation required by the petitioner's business, are so complex that, without a college degree, a person could not be sufficiently erudite to perform them. The petitioner's owner stated, for instance:

Merely being fluent as defined by the USCIS without a formal advanced four-year university-level theoretical education through a deep understanding of linguistic, cultural, social, and political, and economic background is far from being a qualified translator.

The petitioner's owner also provided more documents as evidence of the type of translations to be performed in the petitioner's business and additional evidence pertinent to previous translators for whom the petitioner had filed, and for whom H-1B visa petitions were approved.

Initially, the AAO will address the unpublished AAO decision upon which the petitioner seeks to rely. It is unclear whether the petitioner's owner cited that case for the proposition that all interpreter/translator positions qualify as specialty occupation positions, or meant to assert that the position in that case is so similar to the proffered position in the instant case that the same result must necessarily be reached. In either event, the citation of that case will not support a finding that the position in the instant case is a specialty occupation position.

First, 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. The unpublished decision relied upon by the petitioner's owner has no precedential value, *per se*.

Further, as was noted above, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The petitioner is permitted, of course, to provide evidence that the position in the case referred to and the proffered position in the instant case are so nearly identical that the similarity dictates the same result, and to argue that the reasoning in the case to which the petitioner's owner referred is persuasive, and should be extended the instant case. However, the petitioner furnished no evidence, other than the decision itself, to establish that the facts of the instant petition are analogous to those in the unpublished decision, and has made no such argument.

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Any suggestion that USCIS should request and review case files relevant to unpublished decisions to determine whether the facts are similar to a case at issue, in addition to being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to

section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO was not required to obtain and analyze the record of proceeding corresponding to the unpublished decision cited by the petitioner's owner.

The unpublished decision itself contains insufficient evidence pertinent to the facts of the previous case, and the record of proceeding does not contain any other evidence pertinent to those facts. Further, the petitioner's owner made no argument pertinent to the reasoning of that case, other than to observe that it was for an interpreter/translator position and that it was ultimately approved. The result in that case has not been shown to be germane to the instant case.

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)(I) 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)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by the petitioner's owner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 27-3091, Interpreters and Translators from O*NET. The *Handbook* describes the occupation of "Interpreters and Translators" as follows:

What Interpreters and Translators Do

Interpreters and translators convert information from one language to another. Interpreters work in spoken or sign language, translators in written language.

Duties

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

Interpreters and translators typically do the following:

- Convert concepts in the source language to equivalent concepts in the target language
- Speak, read, and write fluently in at least two languages, including English and one or more others
- Relay style and tone
- Manage work schedules to meet deadlines
- Render spoken ideas accurately, quickly, and clearly

Interpreters and translators aid communication by converting information from one language into another. Although some people do both, interpreting and translating are different professions: interpreters deal with spoken words, translators with written words.

Interpreters convert information from one spoken language into another—or, in the case of sign language interpreters, between spoken language and sign language. Interpreters must usually be fluent speakers or signers of both languages because they communicate back and forth among the people who do not share each other's language.

There are two modes of interpreting: simultaneous and consecutive.

Simultaneous interpreting requires interpreters to listen or watch and speak or sign at the same time someone is speaking or signing. Simultaneous interpreting requires a high level of concentration. For that reason, simultaneous interpreters usually work in pairs, each interpreting for about 20 to 30 minutes and then resting while the other interprets. Simultaneous interpreters are often familiar with the subject matter so they can anticipate the end of a speaker's sentences.

In contrast, consecutive interpreting begins only after the speaker has said or signed a group of words or sentences. Consecutive interpreters often take notes while listening to or watching the speakers, so they must develop some type of notetaking or shorthand system.

Translators convert written materials from one language into another. The goal of a translator is to have people read the translation as if it were the original. To do that, the translator must be able to write sentences that flow as well as the original did while keeping the ideas and facts of the original accurate. Translators must consider any cultural references, including slang, and other expressions that do not translate literally.

Translators must read the original language fluently but may not need to speak it fluently. They usually translate only into their native language.

Nearly all translation work is done on a computer, and translators receive and submit most assignments electronically. Translations often go through several revisions before becoming final.

Interpreters' and translators' services are needed in a number of subject areas. Although these workers often do not specialize in any particular field or industry, many focus on one area of expertise.

The following are examples of occupational specialties:

Health or medical interpreters and translators typically work in healthcare settings and help patients communicate with doctors, nurses, and other medical staff. Both interpreters and translators must have a strong grasp of medical terminology and the common words for those medical terms in both languages.

Health or medical interpreters must also have sensitivity to participate in patients' personal situations with healthcare providers.

Health or medical translators don't usually have the same level of personal interaction with patients and providers that interpreters do. They primarily convert information brochures, materials that patients must read and sign, and website information from one language to another.

Legal or judiciary interpreters and translators typically work in courts and other legal settings. At hearings, arraignments, depositions, and trials, they help people who have limited English proficiency. They must understand legal terminology. Many court interpreters must sometimes read documents aloud in a language other than that in which they were written, a task known as sight translation.

Literary translators rewrite journal articles, books, poetry, and short stories from one language into another language. They strive to keep the author's tone and style as well as meaning. Whenever possible, literary translators work closely with authors to capture their intended meaning and literary characteristics.

Localization translators adapt text for a product or service from one language into another. Localization specialists strive to make it appear as though the product originated in the country where it will be sold. They must know not only both languages, but they must also understand the technical information they are working with and must understand the culture of the people who will be using the product or service.

Localization may include adapting Internet sites, marketing materials, instruction manuals, and other publications. Usually, these are related to products and services in manufacturing and other business sectors.

Localization may be helped by computer-assisted translation, where a computer program develops an early draft of a translation for the localization translator to work with. Also, translators may use computers to compare previous translations with current assignments.

Sign language interpreters help people who are deaf or hard of hearing and people who can hear communicate with each other. Sign language interpreters must be fluent in English and in American Sign Language (ASL), which combines signing, finger spelling, and specific body language. ASL is a separate language from English with its own grammar.

Some interpreters specialize in other forms of interpreting for people who are deaf or hard of hearing.

Some people who are deaf or hard of hearing lip-read English instead of signing in ASL. Interpreters who work with these people do "oral interpretation," mouthing speech silently and very carefully so their lips can be read easily. They may also use facial expressions and gestures to help the lip-reader understand.

Other specialties include using cued speech, which uses hand shapes placed near the mouth to give lip-readers more information; signing exact English; and tactile signing, which is interpreting for people who are blind as well as deaf by making hand signs into the deaf-blind person's hand.

Guide or escort interpreters accompany either U.S. visitors abroad or foreign visitors in the United States to ensure that they are able to communicate during their stay. These specialists interpret informally and on a professional level. Frequent travel for these workers is common.

Conference interpreters work at conferences that have non-English-speaking attendees. The work is often in the field of international business or diplomacy, although conference interpreters can interpret for any organization that works with speakers of foreign languages. Employers prefer high-level interpreters who have the ability to translate from at least two languages into one native language—for example, the ability to interpret from Spanish and French into English. For some positions, such as those with the United Nations, this qualification is required.

Conference interpreters often do simultaneous interpreting. People at the conference who do not understand the language of the speaker wear earphones tuned to the

interpreter who speaks the language they want to hear. The interpreter listens to a bit of the speaker's talk and then translates that bit. Simultaneous interpreters must be able to listen to the next bit the speaker is saying while translating the previous bit of what the speaker said.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Interpreters and Translators," <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-2> (last visited August 20, 2013).

The duties the petitioner's owner attributed to the proffered position are consistent with the duties of interpreters and translators as described in the *Handbook*. The AAO finds that the proffered position is an interpreter and translator position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of interpreter and translator positions:

How to Become an Interpreter or Translator

Although interpreters and translators typically need a bachelor's degree, the most important requirement is that they be fluent in English and at least one other language. Many complete job-specific training programs. It is not necessary for interpreters and translators to have been raised in two languages to succeed in these jobs, but many grew up communicating in both languages in which they work.

Education

The educational backgrounds of interpreters and translators vary, but it is essential that they be fluent in English and at least one other language.

High school students interested in becoming an interpreter or translator should take a broad range of courses that includes English writing and comprehension, foreign languages, and computer proficiency. Other helpful pursuits for prospective foreign-language interpreters and translators include spending time abroad, engaging in direct contact with foreign cultures, and reading extensively on a variety of subjects in English and at least one other language. Through community organizations, students interested in sign language interpreting may take introductory classes in ASL and seek out volunteer opportunities to work with people who are deaf or hard of hearing.

Beyond high school, people interested in becoming an interpreter or translator have many educational options. Although a bachelor's degree is often required for jobs, majoring in a language is not always necessary. An educational background in a particular field of study can provide a natural area of subject-matter expertise.

However, interpreters and translators generally need specialized training on how to do the work. Formal programs in interpreting and translating are available at colleges and universities nationwide and through nonuniversity training programs, conferences, and courses.

Many people who work as conference interpreters or in more technical areas—such as localization, engineering, or finance—have a master's degree. Those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

Certification

There is currently no universal certification required of interpreters and translators. However, workers can take a variety of tests that show proficiency. For example, the American Translators Association provides certification for its members in 24 language combinations involving English.

Federal courts provide certification for Spanish, Navajo, and Haitian Creole interpreters, and many state and municipal courts offer their own forms of certification. The National Association of Judiciary Interpreters and Translators also offers certification for court interpreting.

The National Association of the Deaf and the Registry of Interpreters for the Deaf (RID) jointly offer certification for general sign language interpreters. In addition, the registry offers specialty tests in legal interpreting, speech reading, and deaf-to-deaf interpreting—which includes interpreting among deaf speakers with different native languages and from ASL to tactile signing.

The U.S. Department of State has a three-test series for prospective interpreters—one test in simple consecutive interpreting (for escort work), another in simultaneous interpreting (for court or seminary work), and a third in conference-level interpreting (for international conferences)—as well as a test for prospective translators. These tests are not considered a credential, but their completion indicates that a person has significant skill in the occupation.

The International Association of Conference Interpreters offers certification for conference interpreters.

The Certification Commission for Healthcare Interpreters offers two types of certifications for healthcare interpreters: the Associate Healthcare Interpreter (AHI) for interpreters of languages other than Spanish, Arabic, and Mandarin, and the Certified Healthcare Interpreter (CHI) for interpreters of Spanish, Arabic, and Mandarin.

The National Board of Certification for Medical Interpreters offers certification for medical interpreters of Spanish. Prerequisites to become a Certified Medical Interpreter (CMI) are as follows:

- Being 18 years old
- High school diploma or equivalent
- Completion of a medical interpreter educational program
- Oral proficiency in English
- Oral proficiency in the target language (Spanish)

Advancement

After interpreters and translators have enough experience, they may move up to more difficult or prestigious assignments, seek certification, get editorial responsibility, or manage or start their own business.

Many self-employed interpreters and translators start a business by establishing themselves in their field. They may submit resumes and samples to many different translation and interpreting agencies and work for agencies that match their skills with a job. Many then get work based on their reputation or through referrals from existing clients.

Work Experience

Work experience is essential. In fact, some agencies hire only interpreters or translators who have related work experience.

A good way for translators to learn firsthand about the occupation is to start working in-house for a translation company. Doing informal or volunteer work is an excellent way for people seeking to get interpreter or translator jobs to get experience.

Volunteer opportunities for interpreters are available through community organizations, hospitals, and sporting events, such as marathons, that involve international competitors. The American Translators Association works with the [REDACTED] to provide volunteer interpreters during crises.

Paid or unpaid internships are other ways that interpreters and translators can get experience. Escort interpreting may offer an opportunity for inexperienced candidates to “shadow,” or work alongside, a more experienced interpreter. Interpreters also might find it easier to break into areas with particularly high demand for language services, such as court or medical interpreting.

To show experience in translation, any translation—even translation done as practice—can be used as a sample for potential clients.

Whatever path of entry they pursue, new interpreters and translators should develop relationships with mentors to build their skills, confidence, and professional network. Mentoring may be formal, such as that through a professional association, or informal, such as with a coworker or an acquaintance who has experience as an interpreter or translator. Both the American Translators Association and the Registry of Interpreters for the Deaf offer formal mentoring programs.

Important Qualities

Business skills. Self-employed and freelance interpreters and translators need general business skills to manage their finances and careers successfully. They must set prices for their work, bill customers, keep records, and market their services to attract new business and build their client base.

Concentration. The ability to concentrate while others are speaking or moving around them is critical for interpreters and translators.

Cultural sensitivity. Interpreters and translators must be sensitive to cultural differences and expectations among the people whom they are helping to communicate. Successful interpreting and translating is not only a matter of knowing the words in different languages but also of understanding people's cultures.

Dexterity. Sign language interpreters must have quick and coordinated hands, fingers, and arm movements when interpreting sign language for a targeted audience.

Listening skills. Interpreters and translators must listen carefully when interpreting for audiences to ensure that they interpret or translate correctly.

Speaking skills. Interpreters and translators must speak clearly in the languages they are translating.

Writing skills. Interpreters and translators must be able to write clearly and effectively in the languages they are talking in or translating.

Id. at <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-4> (last visited August 20, 2013).

The *Handbook* states that interpreters and translators "typically" need a bachelor's degree, which implies that some interpreters and translators do not need a bachelor's degree. More importantly, however, it makes clear that even those interpreter and translator positions that may require a

degree do not normally require a minimum of a bachelor's degree *in a specific specialty* or its equivalent. Rather than stating that interpreters and translators must have a degree in English literature, for instance, it states majoring in a language is not always necessary, and that interpreters and translators have a variety of educational backgrounds. This is the antithesis of a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

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 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. 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 interpreter and translator positions do not require such a degree.

Finally, 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 fluency in English and Chinese, and a large vocabulary in both languages, 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.

As was noted above, the petitioner did submit a letter from [REDACTED] an attorney whose firm specializes in serving Asian clients. As was also noted, she stated that all of her firm's translators have "at least a Bachelor degree in liberal arts" That statement makes clear that the translator positions at that firm do not qualify as specialty occupation positions.

A bachelor's degree in liberal arts is inadequate to establish that a position qualifies as a specialty occupation. The list of subjects included in the general category "liberal arts" may vary with context, but it certainly includes anthropology, sociology, various branches of history, criminology, political science, psychology, and philosophy. To show that a position qualifies as a specialty occupation position, a petitioner must demonstrate that it requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree of generalized title, such as liberal arts, without further specification, does not establish eligibility. The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Cf. Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558 (Comm'r 1988).

Further, the petitioner submitted the July 27, 2012 evaluation of Professor [REDACTED] which states:

It is typical for a law firm serving the Asian community with high demands for translation services to hire a Bilingual Translator or someone in a similar professional position, and require the minimum attainment of a Bachelor's Degree in Translation and Interpretation, English Language and Literature, or a related area for the position.

Initially, the AAO observes that, as was noted above, the LCA indicates that the proffered position is a Level I, entry-level, position, which indicates that the petitioner's demands on the beneficiary would not be very high.²

Further, the evaluation does not list any reference materials on which the evaluator relied as a basis for her conclusion that "law firms serving the Asian community with high demands for translation services" typically require a minimum of a bachelor's degree in one of the subjects she listed. The

² If the proffered position is not a Level I position, as it is represented to be on the LCA, then the LCA would not correspond with the visa petition, and the visa petition would be deniable on other grounds.

evaluator appears not to have based her opinion on any objective evidence, but instead to have relied on her own subjective judgment.

Further still, although the professor has a bachelor's degree in English, a master's degree in Education, and a doctorate of education in education media and technology, the AAO finds that neither the body of the evaluation nor its attached résumé and list of publications establishes that the evaluator has any expertise or insight into the requirements law firms place on interpreter and translator positions. Nothing in the record establishes that the evaluator has in any way attained such knowledge about the actual performance requirements of positions such as the one proffered here that her opinion should be accorded any deference by USCIS.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). For all of the above reasons, the AAO accords no probative weight to the July 27, 2012 position evaluation.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner did submit four vacancy announcements placed by other firms. Specifically, the petitioner submitted advertisements for the following positions placed in newspapers and posted on the Internet:

1. Translator: Bilingual English/French (Canadian) for [REDACTED] requiring "BA in French, Journalism, PR or Mass Communications or relate" (Because that educational requirement has been truncated by the format in which the vacancy announcement was printed, what may be substituted for a degree in the array listed is unknown to the AAO.);
2. Legal Assistant/Translator to translate between Chinese and English for an unidentified law firm in [REDACTED] California, requiring a bachelor's degree in English;
3. Translator – Chinese to English for [REDACTED] an investment research firm, requiring an unspecified bachelor's degree; and
4. Translator/Interpreter placed by a recruiting firm for [REDACTED] requiring an unspecified bachelor's degree.

The vacancy announcements provided, however, at best confirm the *Handbook* information that a bachelor's degree is often required for interpreter and translator positions, but a bachelor's degree or the equivalent in a *specific specialty* often is not.

The second announcement requires a bachelor's degree in English. Although a degree in "English" might include English Composition, English Education, English Literature, Teaching English as a Second Language, and possibly other subjects, a requirement of a degree in "English" may still be construed to be a requirement of a degree in a specific specialty.

However, the third and fourth vacancy announcements appear to indicate that a degree in any subject would be sufficient. A requirement of a bachelor's degree without the specification of a major is not a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Because the educational requirement expressed in the first vacancy announcement was apparently pruned by the petitioner's printer, the alternatives to a bachelor's degree that may be acceptable for that position are unknown to the AAO. As such, on this basis alone, the AAO would be unable to determine that the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, however, the first vacancy announcement indicates that a degree in French, journalism, public relations, or mass communications would be a sufficient educational qualification for the position announced. French, journalism, public relations, and mass communications are clearly not a specific specialty.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in either of two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added).

The first vacancy announcement indicates that baccalaureate degrees in various fields, French, journalism, public relations, and mass communications, would be an acceptable educational qualification for the position. Accordingly, as the first vacancy announcement indicates that the position announced does not require at least a bachelor's degree in a specific specialty or its equivalent, the position announced does not appear to be a specialty occupation position.

Of the three vacancy announcements provided, only one appears to require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Furthermore, only one of the vacancy announcements provided has been shown to be in the petitioner's industry, that is, the legal profession. Two others are clearly not in the petitioner's industry. For this additional reason, three of the four vacancy announcements are not evidence that parallel positions in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all four of the vacancy announcements provided 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 four announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

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.

The petitioner did submit examples of the type of document the beneficiary would translate, however, they do not demonstrate that the proffered position is so complex or unique that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent.⁴

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

³ 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 interpreter or translator 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 may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

⁴ In fact, although they do not demonstrate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, the documents to be translated are sufficiently complex to cast some doubt on the assertion, made on the LCA, that the proffered position is a Level I, entry-level, position.

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 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.

Although the petitioner's owner stated, in her undated declaration, that the proffered position is a "special senior position," and implied that it requires more education than more ordinary interpreter and translator positions, the petitioner has, as was noted above, designated the proffered position a Level I position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the duties of interpreting and translating. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some interpreter and translator positions do not require such a degree.

The evidence of record does not establish that this position is significantly more complex or unique than other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. 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 proffered position.⁵

In her March 15, 2012 letter, the petitioner's owner stated that, "For imperative reasons, [the] petitioner [requires] a bachelor's degree in English language or related fields" for the proffered

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

position. In her August 14, 2012 letter, she stated that the petitioner always requires its translators to possess, at a minimum, a bachelor's degree in English, or its equivalent. The petitioner's own vacancy announcements suggest that the petitioner requires a minimum of a master's degree in English or English education. The petitioner cited the Colorado trial court decision reported, in popular media, to have been overturned because of poor translation services rendered, as her reason for "always require[ing] . . . at minimum, a bachelor's degree in English, or its equivalent," for the proffered position. [Emphasis supplied.]

In a March 28, 2012 declaration, the petitioner's owner stated "this translator position is a special senior position which requires at least a Bachelor's Degree in English or other majors. . . ."

The petitioner claims to have previously employed four persons in the proffered position, and further contends that it currently employs four individuals in this position (including the beneficiary). The AAO will address the petitioner's hiring history for each employee, excluding the beneficiary, individually below.

Name	Educational Background	Documentation
[Redacted]	Master of Education Teaching English as a Foreign Language, Bachelor of Law, [Redacted], China.	Diplomas
[Redacted]	Bachelor of Arts Degree, [Redacted] (Major not specified)	Diploma
[Redacted]	Master's Degree in English and Bachelor's Degree in English, [Redacted]	Org. Chart
[Redacted]	Bachelor's Degree in Economics, [Redacted]	Resume
[Redacted]	Master of Liberal Arts & Bachelor of Arts, [Redacted]	Diplomas
[Redacted]	Master of Arts – English, [Redacted] Master of Education, [Redacted] Bachelor of Education, [Redacted] China.	Diplomas
[Redacted]	Master's Degree in TESOL, [Redacted] Master's Degree in General Education,	Resume

[REDACTED] China;
Bachelor's Degree in English Education,
[REDACTED] China.

The AAO notes that, upon review of the record, there is no documentary evidence to corroborate the claimed educational backgrounds of [REDACTED]. With regard to [REDACTED] the record contains only a copy of his Form 1099, Miscellaneous Income, for 2010. His claimed educational background is set forth on the petitioner's internally-created organization chart. No additional documentary evidence, such as diplomas or transcripts, is submitted. Moreover, although the petitioner claims that he is currently employed on a part-time basis as a contract translator, there is no evidence such as an employment contract or job offer letter, affirming that he in fact is employed in the capacity claimed by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Consequently, his credentials will not be considered under this criterion.

The petitioner also claims that [REDACTED] was previously employed by the petitioner as a bilingual translator. However, the record contains only a copy of Ms. [REDACTED] resume, which states that Ms. [REDACTED] holds a Bachelor's Degree in Economics. The record contains no documentary evidence to corroborate her claimed educational credentials. More importantly, however, the record contains no evidence, such as paystubs, payroll records, or year-end tax forms such as W-2s or 1099s, to demonstrate that she actually was employed by the petitioner. Although the record contains a Form I-9, Employment Eligibility Verification, and a Form W-4, Employee's Withholding Allowance Certificate, these forms, without more, do not establish that Ms. [REDACTED] was employed by the petitioner. The Form I-9, for example, verifies at best that an employer has made an effort to ascertain whether particular individuals are authorized to work; they do not verify that those individuals have actually begun working. *See Matter of Ho*, 22 I&N Dec. 206, 212 (Assoc. Comm. 1998). In the absence of such evidence as pay stubs and payroll records, the petitioner has not established that the petitioner employed Ms. [REDACTED] as claimed. Regardless, her claimed degree is in a discipline unrelated to the claimed specialty occupation at issue; therefore, even if her employment with the petitioner has been verified, it would not establish a history of hiring specialty-degreed individuals for the proffered position.

Similarly, [REDACTED] educational credentials are not corroborated in the record. The petitioner submitted Mr. [REDACTED] resume, which lists his educational credentials. The petitioner also submits his 2010 Form W-2, Wage and Tax Statement, evidencing his employment with the petitioner. However, there is no objective documentary evidence corroborating his claimed educational achievements in the record. Consequently, his credentials and employment with the petitioner must also be discounted.

Next, the AAO notes that the record contains no records corroborating the claimed employment of [REDACTED] who appears to have previously been approved to work for the petitioner in H-

1B status. The fact that a beneficiary may have been approved for H-1B employment does not automatically confirm that such a beneficiary actually commenced employment under the previously approved petition. Absent evidence such as payroll records, paystubs, or other corroborating documentation, this employee's credentials cannot be considered under this criterion.

The petitioner's evidence, therefore, contains documentation to demonstrate that [REDACTED] [REDACTED] are currently or were previously employed by the petitioner. However, the evidence pertaining to their employment contains deficiencies.

First, the petitioner contends on its organizational chart that [REDACTED] is employed as a bilingual translator, and corroborates this claim by submitting copies of his 1099 forms for 2010 and 2011. However, Mr. [REDACTED] degree indicates simply "Bachelor of Arts." There is no indication that his degree is in a specific specialty and, more specifically, in English as the petitioner claims is an absolute requirement. Therefore, Mr. [REDACTED] employment cannot demonstrate a history of hiring only specialty-degreed individuals exists.

Moreover, the record contains evidence that [REDACTED] who was previously granted H-1B status to work in the proffered position and who was employed by the petitioner in 2009 and 2010 as evidenced by her W-2 forms contained in the record, has a bachelor of arts degree and a master's degree in liberal arts. According to the petitioner's letter of support dated March 26, 2009, the beneficiary's undergraduate degree is in mass communication with an emphasis on news writing and public relations. The record, however, contains no evidence to support this contention, such as copies of transcripts or other official university records, and the beneficiary's diploma does not specify her major or concentration. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Nevertheless, even if sufficient documentation was submitted to corroborate the beneficiary's claimed undergraduate major in mass communication, the petitioner's employment of Ms. [REDACTED] would undermine its claim that it only hires individuals who hold a degree in English for the proffered position.

Finally, the record demonstrates that [REDACTED] currently employed by the petitioner as evidenced by her Form W-2 for 2011, possesses a Master of Education Teaching English as a Foreign Language. However, the employment of this degreed individual likewise does not establish that the petitioner routinely hires only specialty-degree individuals with a degree in *English* as claimed in the record. Under this criterion, the petitioner must establish that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. Ms. [REDACTED] does not hold a bachelor's degree in English, and therefore her employment further contradicts the petitioner's claim that it only hires translators who hold a degree in English.

The petitioner claims that it has been employing only specialty-degreed translators since 2004; however, there is no evidence of its employment of translators prior to 2009. The evidence pertaining to its recent translators is insufficient for the reasons set forth above, and the record contains no additional documentation to establish a historic standard has been in place since 2004.

Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Therefore, the petitioner has failed to establish that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and is unable, therefore, to satisfy 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 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 helping attorneys prepare cases,⁶ assisting attorneys in communicating and corresponding with the Chinese speaking clients, translating documents, interpreting for clients at interviews, working with Chinese speaking clients to gather documents necessary for case processing, and performing other translation and interpretation duties contain no indication of a nature so specialized and complex that they require knowledge usually associated with a minimum of 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 interpreter or translator position, a position for a beginning level employee with only a basic understanding of the position. 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 interpreting and translating, especially as the *Handbook* indicates that some interpreter and translator positions require no such specialized degree.

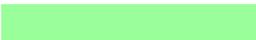
For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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.

⁶ The AAO observes that, if the proffered position involves helping attorneys prepare cases in ways that are unrelated to interpreting and translating, then the LCA submitted may not correspond to the visa petition, and the visa petition may be deniable on other grounds.

(b)(6)



NON-PRECEDENT DECISION

Page 27

ORDER: The appeal is dismissed.