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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 2 2 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on April 7, 2011. In the Form I-129 visa petition, the petitioner describes itself as a "preschool education services" business established in 1995. In order to employ the beneficiary in what it designates as a lead teacher position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on January 11, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

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

With the Form I-129 petition, the petitioner submitted a letter dated March 21, 2011, which included a description of the duties of the proffered position. Specifically, the petitioner stated that the beneficiary would perform the following duties:

> a) instruct children in all activities designed to promote social, physical and intellectual growth in preschool children;
>
> b) plan individual and group activities for preschool children such as learning to listen to instructions, getting along with others and developing cognitive skills using the Montessori Method;
>
> c) structure learning activities to instill concept of respect and concern for others;
>
> d) monitor individual and group activities to prevent accidents, promote social skills and encourage good health habits; and
>
> e) confer with parents to explain preschool programs and to discuss ways they can develop their child's interest.

> The candidate therefore will be expected to know and be familiar with the Montessori Method, its instructional methods and training techniques including curriculum design principle, learning theory, group and individual teaching techniques, design of individual development plans and test design principles.
>
> Time spent on each duty will vary with the program assigned to a particular month but each day in general shall be spent, but not limited to instructing children in activities designed to promote social, physical and intellectual growth, establishing safety rules and supervising activities of children to ensure their safety, and planning individual and group activities for children such as learning to listen to instructions, playing with others and using play equipment. In addition, the Lead Teacher will spend time organizing and implementing a positive and comfortable routine by establishing realistic limits for the children by effective use of time and by providing active and quiet activities. She will also spend time meeting regularly with the parents and with her co teachers, assistant teachers and classroom volunteers, and shall conduct performance evaluations of team members, and program evaluations. The Lead Teacher will be expected to work 40 hours a week and will report directly to the School Director.

The AAO notes that the responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's operations. The petitioner failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

In the letter of support, the petitioner stated the minimum educational requirement for the proffered position as "a Bachelor's degree, [and] a certificate in the Montessori Method of Education." The AAO notes that the petitioner does not provide any further specification with regard to its academic and certificate requirements.

The petitioner noted that the beneficiary holds a bachelor's degree in humanities and a professorial certificate in early childhood education from a Pilipino university, and an American Montessori Society certificate for three to six year olds from the [redacted] With the petition, the petitioner submitted a copy of the beneficiary's foreign diploma, transcript, and professional credentials, as well as a credential evaluation report from [redacted] The evaluation states that the beneficiary's qualifications are equivalent to a "Bachelor of Arts degree with a major in humanities and a major in childhood development education from an accredited institution of higher education in the United States."

The petitioner also submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Preschool Teachers, Except Special Education" – SOC (ONET/OES Code) 25-2011.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 3, 2011. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director specifically requested the petitioner submit a more detailed job description of the work to be performed by the beneficiary, including the specific job duties, the percentage of time to be spent on each duty, level of responsibility, etc. In addition, the director asked the petitioner to submit an organizational chart. The director outlined the specific evidence to be submitted.

On June 2, 2011, counsel for the petitioner responded to the RFE by submitting a brief and additional evidence. Specifically, counsel submitted (1) several job postings; (2) a letter from director of the ; (3) printouts from the American Montessori Society website; (4) articles about Montessori education; (5) a brochure about the Montessori Method of education; and (6) lesson plans.

The AAO observes that counsel for the petitioner provided some further information regarding the proffered position. For example, counsel stated that "[a]s Lead Teacher, [the beneficiary] has the following work schedule:"

9:00 - 9:30 a.m.	Line Time/Circle Time (Morning Greeting, Story and Group Lesson)
9:30 – 11:30	Work Time (Individual and Group Lessons)
11:30 – 11:45	2nd Line Time/Circle Time
11:45 – 12:45	Lunch Time
12:45 – 1:00	Goodbye Time (for half day children)
1:00 – 1:15	Gate/Dismissal for Half Day Children
1:15 – 1:45	Lunch
1:45 – 2:45	Afternoon Work Time (for full day and extended day children)
2:45 – 3:00	Goodbye Time (for full day children)
3:00 – 3:30	Line Time (for extended day children)
3:30 – 4:00	Snack Time (for extended day children)
4:00 – 5:00	Child Care

It is noted that counsel's brief was not endorsed by the petitioner and the record of proceeding does not indicate the source of the schedule that counsel attributes to the proffered position. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the schedule provided by counsel indicates that almost three hours of the beneficiary's day are spent for lunch / snack time and goodbye time / gate dismissal. Additionally, according to counsel, the beneficiary spends three hours on work time; one hour fifteen minutes on line time and circle time; and one hour on child

care. The schedule does not account for the additional duties as stated by the petitioner in the initial submission. The schedule provided by counsel fails to convey either the substantive nature of the work that the beneficiary would actually perform, any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform it, or the educational level of any such knowledge that may be necessary.

Although specifically requested in the RFE, the petitioner elected not to provide a more detailed description of the duties the beneficiary would perform. Furthermore (aside from the schedule submitted by counsel), the petitioner failed to provide information as to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. The petitioner failed to specify which tasks are major functions of the proffered position. Furthermore, the petitioner did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position. Moreover, the petitioner also elected not to provide an organizational chart showing its hierarchy and staffing levels, despite the director's specific request for the information.

Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on January 11, 2012. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition. In support of its Form I-290B, counsel submitted a brief and additional evidence.

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

> *Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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 at 147 (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 make its determination whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a lead teacher position. However, 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 AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[1] As discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Preschool Teachers, Except Special Education."

The AAO reviewed the chapter of the *Handbook* entitled "Preschool Teachers," including the sections regarding the typical duties and requirements for this occupational category.[2] However, the *Handbook* does not indicate that "Preschool Teachers" comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

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[1] All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/.

[2] For additional information on the occupational category "Preschool Teachers," *see* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool Teachers, on the Internet at http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-1 (last visited February 20, 2013).

The subchapter of the *Handbook* entitled "What Preschool Teachers Do" states the following about this occupation:

> 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, on the Internet at http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-2 (last visited February 20, 2013).

The duties of the proffered position as described by the petitioner appear to be encompassed by the typical duties of preschool teachers as stated in the *Handbook.*

The subchapter of the *Handbook* entitled "How to Become a Preschool Teacher" states, in pertinent part, the following about this occupation:

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 a 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.

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool Teachers, on the Internet at http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4 (last visited February 20, 2013).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that although there is a range of acceptable credentials, most preschool teachers are required to have a high school diploma. The *Handbook* further indicates that some employers *prefer* to hire workers with some postsecondary education in early childhood education. The *Handbook* does not indicate that "some postsecondary education" is a baccalaureate (or higher degree). The AAO notes that obviously, a *preference* for a particular level of education does not indicate a requirement.

The *Handbook* discusses the requirements for preschool teachers in Head Start programs and in public schools. The petitioner does not claim, and has not provided any documentation to support a finding, that it has a Head Start program or is a public school. Thus, these paragraphs of the *Handbook* are not relevant to the instant matter.

In its March 21, 2011 letter of support, the petitioner indicated that it utilizes the Montessori Method of education, which is a particular method of education requiring specialized Montessori teacher training. As previously noted, the petitioner stated the minimum educational requirement for the proffered position as "a Bachelor's degree, [and] a certificate in the Montessori Method of Education" (without any further specification). The AAO observes that counsel for the petitioner repeatedly claims that a bachelor's degree is a necessary prerequisite for eligibility for a Montessori certificate. However, contrary to counsel's claim, the evidence of record indicates that a bachelor's degree is *not* in fact required for a Montessori certificate. In response to the RFE, counsel provided a printout from the section of American Montessori Society's website entitled "Become an AMS Montessori Teacher or Administrator," which states, in part, the following:

> **Credentials**
>
> AMS awards credentials to teach children in any of the following age levels: birth through 3, 2.5 – 6, 6 – 12, and 12 – 18. AMS also awards an adiministrator [sic] credential.
>
> To be eligible to earn a full Montessori credential at an AMS-affiliated teacher education program, you must hold a BA or BS degree (or higher). **If you have completed high school but do not hold a college degree, you are eligible to earn an associate credential at the Infant & Toddler and Early Childhood levels.**
>
> You can read more about this in the AMS Teacher Education Programs page of this Web site.

(Emphasis added.) The AAO reviewed the portion of the website entitled "AMS Teacher Education Programs," which states in pertinent part:

> **Montessori Credentials**
>
> AMS issues Montessori credentials to successful graduates of AMS-affiliated TEPs who hold a BA or BS degree (or higher). **An associate credential for Infant & Toddler and Early Childhood levels is awarded to those who have completed high school but do not hold a college degree.**
>
> The following credentials are awarded after graduation from an AMS TEP:
> - Infant & Toddler (birth – age 3)
> - Early Childhood (ages 2 1/2 – 6)
> - Elementary I (ages 6 – 9)

- Elementary II (ages 9 – 12)
- Elementary I – II (ages 6 – 12)
- Secondary I (ages 12 – 15)
- Secondary I – II (ages 12 – 18)
- Administrator

(Emphasis added.) American Montessori Society, "AMS Teacher Education Programs," available on the Internet at http://www.amshq.org/Teacher%20Resources/~/link.aspx?_id=0CB4C5FCC93D41869 F5B77D87FBF35F6&_z=z (last visited February 20, 2013).

In response to the RFE, counsel submitted several materials regarding the Montessori method of education. However, upon review of the documentation, the AAO does not find that the materials indicate that a baccalaureate (or higher degree) in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. For example, counsel submitted a brochure entitled "The Montessori Method of Education." The brochure states that "[e]ach Montessori teaching training program is somewhat different" and that "training varies with each organization." Contrary to the purpose for which it was submitted, the brochure does not support a finding that the proffered purpose qualifies as a specialty occupation. In addition, counsel submitted an article entitled "[redacted]' written by [redacted]. The article states that "[t]he trained directress has spent a minimum of nine months learning her art – some have spent two or three years." The statement also does not support a finding that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into such positions.

In addition, the AAO reviewed the documentation submitted on appeal. However, the AAO finds that counsel's reliance on the materials is misplaced. For instance, counsel submitted an excerpt of the New England Montessori Teacher Education Center Student Handbook (Student Handbook). Under the heading "Credentials Awarded," the Student Handbook states, in pertinent part, the following:

> AMS Early Childhood Credential:
>
> Applicant holds a degree from an accredited four year college or equivalent foreign credential. **No specific field of study is designated**; background in child development or psychology is recommended.
>
> AMS Associate Early Childhood Credential:
>
> Applicant has exceptional experience or qualifications and holds **at least a high school diploma but less than a baccalaureate degree**. Candidates for the Associate Early Childhood Credential must complete all requirements for the AMS Early Childhood Credential. Upon successful completion of the requirements, such candidates are eligible for the AMS Associate Early Childhood Credential. Associate Credential holders may gain full AMS Credentials upon earning a baccalaureate degree.

(Emphasis added.) The information provided by counsel indicates that an applicant who holds "at least a high school diploma but less than a baccalaureate degree" may be eligible for an AMS Associate Early Childhood Credential.[3] Thus, the petitioner and counsel have not established that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.[4]

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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)).

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

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[3] For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must generally be demonstrated for each year of college-level training the alien lacks, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty. *Id.*

The documentation indicates that an applicant who "has exceptional experience or qualifications and holds at least a high school diploma but less than a baccalaureate degree" may be eligible as a candidate for the Associate Early Childhood Credential. There is no indication that the education, experience and/or training of an individual must be the equivalent of at least a bachelor's degree in a specific specialty.

[4] Moreover, upon review of the website, the AAO notes that it specifically states that "[a] college degree is not mandatory for acceptance into the Montessori course, provided the applicant has a compensating background of relevant experience." The website continues by stating that an AMS Associate Early Childhood Credential is granted when an applicant has a high school diploma or GED (General Education Development credential), but not a bachelor's degree.

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. *2d 1151, 1165 (D. Minn. 1999)* (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, including the American Montessori Society, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter.

In support of the petitioner's assertion that the proffered position is a specialty occupation position, the record of proceeding contains several job announcements and several opinion letters from individuals in the industry. However, upon review of the evidence, the AAO finds that the petitioner's reliance on the job announcements and letters is misplaced.

In the Form I-129, the petitioner stated that it is a "preschool education services" business with eleven employees. In its letter of support dated March 21, 2011, the petitioner stated that it is "engaged in providing childcare preschool services for preschool children aged between 2 and 6 years old." In the petition, the petitioner reported its gross annual income as approximately $818,200 and its net annual income as approximately $39,300. The petitioner designated (on page 17 of the Form I-129) its business operations under the North American Industry Classification System (NAICS) code 624110.[5] The AAO notes that this NAICS code is designated for "Child and Youth Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

> This industry comprises establishments primarily engaged in providing nonresidential social assistance services for children and youth. These establishments provide for the welfare of children in such areas as adoption and foster care, drug prevention, life skills training, and positive social development.

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

U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 624110-Child and Youth Services, on the Internet at http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last viewed February 20, 2013).

On the LCA, the petitioner designated its business operations under NAICS code 624410 – "Child Day Care Services." The U.S. Census Bureau website describes this NAICS code as follows:

> This industry comprises establishments primarily engaged in providing day care of infants or children. These establishments generally care for preschool children, but may care for older children when they are not in school and may also offer pre-kindergarten educational programs.

U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 624410-Child Day Care Services, on the Internet at http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last viewed February 20, 2013).

No explanation was provided for classifying the petitioner's business operations under "Child and Youth Services" on the Form I-129. The AAO notes that there is no indication that the petitioner provides nonresidential social assistance services for children and youth. Furthermore, the petitioner has not submitted any information regarding programs involving adoption and foster care, drug prevention, life skills training, and positive social development. Thus, the petitioner has provided inconsistent information regarding the nature of its business operations.

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

The AAO reviewed the job advertisements submitted in support of the H-1B petition. Notably, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Moreover, the AAO observes that some of the postings are partially illegible / missing information in that the content of the advertisements is cutoff the printed pages. The AAO will not attempt to "guess" the substance of the missing information.

Upon review of the documents, the AAO notes that the petitioner has not established that all of the organizations are similar to the petitioner. For example, there is a lack of information regarding the organizations (e.g., private, public/charter, faith based, publicly funded). Moreover, the petitioner

has failed to establish that the advertised positions are for jobs parallel to the proffered position. Specifically, the petitioner submitted a job posting for a Middle School Head Teacher at There is no indication that the duties and requirements for a Middle School Head Teacher are similar or parallel to a preschool lead teacher. Furthermore, this position does not fall under the same occupational category as the proffered position (which the petitioner designated as a "Preschool Teacher" in the LCA.) Without further information, the advertised position does not appear to be parallel to the proffered position. The petitioner also provided postings for for a Head Teacher – Toddler Classroom (two year olds); for a Lead Toddler Teacher; for a Lead K1 Teacher (5-7 years old), and for a Head Teacher/Directress (age group not specified). The postings do not contain sufficient information regarding the duties of the advertised positions such that the AAO can ascertain if they are parallel to the proffered position. For instance, there is no information regarding student-teacher ratio and whether the children attend half-day or full-day programs. Additionally, the job postings lack information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of these positions are the same or parallel to the proffered position. The advertisements provide insufficient information regarding the specific duties of the jobs to ascertain whether the positions are parallel to the proffered position. Notably, the petitioner did not supplement the record of proceeding to establish that the positions are parallel to the proffered position and located in organizations that are similar to the petitioner.

Moreover, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. The AAO here incorporates its earlier finding that there are two types of early childhood Montessori "credentials," one of which does not require a bachelor's degree. The AAO notes that none of the job postings provided specifies which type of early childhood credential is required. Further, some of the job postings requesting a bachelor's degree do not specify a specific specialty. For example, the posting for lead preschool teacher (3 to 5 years) at states an education requirement of "Bachelor's Degree." Similarly, the postings for a middle school head teacher at a toddler teacher at Newton Montessori School, a head teacher at and a primary co-teacher lead teacher at all state an education requirement of a "Bachelor's Degree," without any further specification.

An entry requirement of at least a bachelor's degree without any specialization is inadequate to establish that the advertised positions qualify as specialty occupation positions. A petitioner must demonstrate that the proffered position requires a *precise and specific course of study* that relates directly to the duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The AAO reviewed all of the advertisements submitted in support of the H-1B petition in the instant case. However, as the documentation does not establish that the petitioner has met this prong of the

regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

The job advertisements do not 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. Further, it must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.[6]

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner and counsel provided three industry letters. In response to the RFE, counsel provided a letter from director of the states, "It has been my experience that schools seek to hire people with an undergraduate degree (BA or BS) as well as the Montessori teacher credential." Although it may be desirable to hire preschool teachers with four-year degrees, as the writer suggests, the relevant standard for the granting of an H-1B petition whether the proffered position "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." 8 C.F.R. § 214.2(h)(4)(ii) (Emphasis added.) Contrary to the purpose for which it was submitted, the letter indicates that it is possible to hire teachers who have a Montessori credential, but not a bachelor's degree, although employers *prefer* candidates with bachelor's degrees. Clearly, a preference for a degree does not indicate a requirement.

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[6] According to the *Handbook*'s detailed statistics on this occupation, there were approximately 456,800 persons employed as preschool teachers in 2010. *Handbook*, 2012-13 ed., available at http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-6 (last accessed February 20, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the industry. *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 organizations similar to the petitioner in its industry commonly require, for positions parallel to the one here proffered, at least 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 statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Furthermore, states that she has extensive experience in job placement of graduates in Montessori schools at the early childhood level. Thus, she does not claim that she possesses any specific knowledge of the educational requirements for lead teacher positions (or parallel positions) in the petitioner's industry for similar organizations based upon research or any particular authoritative sources (e.g., statistical surveys, authoritative industry or government publications, or professional studies). Rather, her knowledge is based upon her personal experience, which appears to deal exclusively with a limited group of people – recent graduates of the

Moreover, upon review of the opinion letter, there is no indication that possesses any particular knowledge of the petitioner's proffered position and its business operations. She does not demonstrate or assert in-depth knowledge of the petitioner's specific center or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. There is no evidence that she has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent.

On appeal, counsel and the petitioner submitted three additional letters. The first is from program director at writes that her organization provides "quality education courses to individuals that meet the credentialing competencies of the American Montessori Society (AMS)." states that two agencies have delineated criteria for the qualification of a Montessori Early Childhood Teacher: Montessori Accreditation Counsel for Teacher Education (MACTE) and AMS. claims that each indicate that a bachelor's degree is required, preferably related to child development or education. Finally, states that she has reviewed the description of the proffered position and states that "[a]t a minimum the following is required: 1. Montessori Early Childhood Teacher Credential for which a B.A. degree is required." The AAO observes that the petitioner has not specified in any documentation in the record that it requires a "Montessori Early Childhood Teacher Credential." Rather, the petitioner repeatedly stated that it requires a "Montessori certificate." As discussed above, AMS offers two types of Early Childhood credentials, one of which does not require a bachelor's degree. makes no mention of the AMS Associate Early Childhood Teacher Credential in her letter, nor does she mention that her organization provides non-AMS Montessori certificates to individuals whose foreign education is not assessed to be the equivalent of a U.S. bachelor's degree. should be aware of this information as it is listed on her organization's website. *See* "Admission," available on the Internet at https:// early-childhood/admission (last visited on February 20, 2013).

The second letter submitted on appeal is from manager of teacher education services at the American Montessori Society (AMS). writes, "To be eligible to earn a full Montessori credential at an AMS-affiliated teacher education program, one must hold a BA or BS degree, or its equivalent (or higher) from a 4 year accredited institution in the US." However, does not mention that her organization grants an AMS Associate Early Childhood Credential

for students who do not hold a bachelor's degree, as described above, and on the AMS website. *See* American Montessori Society, "AMS Teacher Education Programs," available on the Internet at http://www.amshq.org/Teacher%20Resources/~/link.aspx?_id=0CB4C5FCC93D41869F5B77D87FBF35F6&_z=z (last visited February 20, 2013). writes, "The perfect candidate meeting AMS standards for Montessori training holds a BA specialty in Child Development as is the case with [the beneficiary's] degree." The AAO notes that while the "perfect candidate" might hold such a specialized degree, by the organization's own standards, a B.A. is not required to obtain an Associate Early Childhood Credential and a B.A. in a specific specialty is not required for the full credential program. *See id.*

The third letter submitted on appeal is from executive director of the Montessori Accreditation Council for Teacher Education (MACTE). writes to verify that the beneficiary is a graduate of one of her organization's nationally accredited programs, and states that MACTE is classified by the U.S. Department of Education as both an institutional and specialized/programmatic accrediting agency. However, the present issue is whether the proffered position is a specialty occupation that "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." 8 C.F.R. § 214.2(h)(4)(ii) of the Act (emphasis added.) USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 560 ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

The AAO observes that each of the four industry letters submitted in this case fails to mention that there is an Associate Early Childhood Credential available that does not require attainment of a bachelor's degree. While employers may prefer to hire teachers will full credentials, the existence of the Associate Early Childhood Credential, for which a bachelor's degree is not required, is probative evidence that *entry into the occupation* of Montessori early childhood teacher does not *require* attainment of a bachelor's degree in a specific specialty, or its equivalent. The AAO may, in its discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International,* 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts these advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letters into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

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

The AAO acknowledges that counsel asserts that the proffered position qualifies as a specialty occupation under this criterion of the regulations. In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted a promotional brochure regarding the learning center, several articles regarding the Montessori Method of education, printouts from the American Montessori Society, lesson plans, unsigned copies of its tax returns for 2009 and 2010, a chart comparing Montessori education to traditional education, and letters from individuals in the industry (as previously discussed). Upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of lead teacher. That is, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. The petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO again observes that the American Montessori Society issues associate credentials in Early Childhood Education to individuals who have no more than a high school diploma. *See* American Montessori Society, "AMS Teacher Education Programs," available on the Internet at http://www.amshq.org/Teacher%20Resources/~/link.aspx?_id=0CB4C5FCC93D41869F5B77D87FBF35F6&_z=z (last visited February 20, 2013). Thus, the American Montessori Society does not indicate that the position of Montessori early childhood education teacher (i.e., preschool teacher) is so complex or unique that it can only be performed by an individual with at least a baccalaureate in a specific specialty, or its equivalent.

Furthermore, the AAO hereby incorporates into this analysis this decision's earlier comments and findings regarding the generalized level of the information and evidence provided with regard to the proposed duties and the position that they are said to comprise. That is, the petitioner fails to demonstrate how the duties of the lead teacher as described in the position description 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. 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.

The AAO observes that the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or

unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience as a teacher will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner states in the Form I-129 petition that it was established in 1995 (16 years prior to the submission of the instant H-1B petition) and has eleven employees. The petitioner did not state the total number of individuals who currently or in the past have served in the proffered position, nor did it provide any evidence regarding its hiring practices, or whether other individuals who

currently or in the past have served in the proffered position have held bachelor's degrees in a specific specialty. The petitioner did not submit any documentation regarding its Lead Teachers' credentials (e.g., transcripts) and evidence to establish their employment with the petitioner (e.g., pay statements, wage reports). Notably, the petitioner did not provide evidence regarding the type of Montessori credential it has required for present and past lead teachers.[7] It also did not include any position announcements for past or current vacancies for the proffered position. The petitioner did not provide an organization chart regarding its staffing levels and hierarchy, as requested by the director in the RFE.

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

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

In the record of proceeding, the petitioner and counsel refer to the "specialized method" and "specialized nature" of Montessori education. The AAO acknowledges that the petitioner and counsel may believe that the proffered position qualifies as a specialty occupation under this criterion of the regulations. However, the AAO reviewed the documentation submitted by the petitioner and finds that it fails to support the assertion that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

In support of the petition, the petitioner submitted various documents, including a promotional brochure regarding the learning center, several articles regarding the Montessori Method of education and related materials, lesson plans, unsigned tax returns, a chart comparing Montessori education to traditional education, and letters from individuals in the industry (as previously discussed). The AAO reviewed all of the evidence in the record; however, it did not find that this evidence establishes that nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. In this regard, the AAO here incorporates into this analysis this decision's earlier comments and findings regarding the generalized level of the information and evidence provided with regard to the proposed duties.

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[7] However, even if the petitioner had provided evidence proving that it has always required full Montessori credentials of all of its instructors, the petitioner would still need to establish that performance of the duties of the proffered position requires theoretical and practical application of a body of highly specialized knowledge requiring the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. Further the petitioner would need to show that its hiring history of degreed individuals does not simply reflect a *preference* for individuals with bachelor's degrees.

Additionally, the AAO here reiterates its earlier comments and findings with regard to the fact that the American Montessori Society issues associate credentials in Early Childhood Education to individuals who possess a high school diploma and Montessori teacher training. *See* American Montessori Society, "AMS Teacher Education Programs," available on the Internet at http://www.amshq.org/Teacher%20Resources/~/link.aspx?_id=0CB4C5FCC93D41869F5B77D87FBF35F6&_z=z (last visited February 20, 2013). Thus, according to the American Montessori Society, the position of Montessori early childhood education teacher (i.e., preschool teacher) does not require at least a bachelor's degree in a specific specialty, or its equivalent. Moreover, upon review of the record, the petitioner has failed to establish that the nature of the duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

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

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

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.