

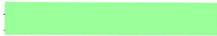


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JAN 02 2013

OFFICE: VERMONT 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:

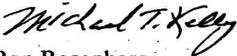
SELF-REPRESENTED

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,


for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a law office¹ established in 1998. In order to employ the beneficiary in what it designates as a paralegal/legal assistant position,² 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).

¹ Although the petitioner described itself as a law office on the Form I-129, it also provided a North American Industry Classification System (NAICS) Code of 541199, "Jury Consulting Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541199 All Other Legal Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed November 23, 2012). The NAICS entry for "Other Legal Services," which is the grouping in which "Jury Consulting Services" is found, states specifically that "[e]stablishments of lawyers and attorneys primarily engaged in the practice of law are classified in Industry 541110, Offices of Lawyers."

Accordingly, the petitioner has provided conflicting information regarding its business operations, in that it claims to be a law office but assigns itself the NAICS code for a jury consulting service. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

² In his June 17, 2011 decision denying the petition, which contained a "re-mail date" of June 21, 2011, the director erroneously referred to the petitioner as a restaurant and to the proffered position as that of a chef. On appeal, counsel claims that the director "failed to address" the issue of whether the proffered paralegal position qualifies for classification as a specialty occupation; that the director failed to analyze the duties of the proffered position; and that the director wrongfully applied mistaken facts to the law. According to counsel, the petition should be approved "on such reasons alone."

Counsel's argument is not persuasive. Even if the AAO were to find that the director's typographical errors had prejudiced the petitioner, that fact alone would not justify approval of the petition; the petitioner would still have to demonstrate that the proffered position qualifies for classification as a specialty occupation under the relevant legal authorities that will be discussed in detail below.

More importantly, the AAO does not find that these typographical errors caused any harm to the petitioner. A careful reading of the director's June 17, 2011 decision demonstrates that the director correctly described the nature of the petitioner's business; properly identified the issue at hand (i.e., whether the proffered position qualifies for classification as a specialty occupation); recounted the procedural history of the case appropriately; accurately summarized and reviewed the evidence submitted by the petitioner; and correctly found the duties of the proffered position analogous to those of a paralegal as described in the *Occupational Outlook Handbook* and reviewed the educational credentials normally required for entry as a paralegal.

The petitioner has not identified any harm that resulted from the director's typographical errors, and the AAO detects none, either. Accordingly, the AAO deems them harmless error on the part of the director, and it will not address this matter further.

The director denied the petition on the basis of his determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the AAO finds an additional aspect which, although not addressed in the director's decision, nevertheless also precludes approval of the petition, namely, providing as the supporting Labor Condition Application (LCA) for this petition an LCA which does not correspond to the petition, in that the LCA was certified for a wage level below that which is compatible with the levels of responsibility, judgment, and independence the petitioner claimed for the proffered position through descriptions of its constituent duties.³ For this additional reason, the petition must also be denied.

In its June 26, 2010 letter of support, the petitioner stated that the duties of the proffered position would include the following tasks:

- Assisting the attorney's preparation of legal documents, including summons, complaints, answers, motions, affidavits, affirmations, contracts, agreements, leases, petitioner, applications, etc.;
- Assisting the attorney in conducting of legal research, including finding statutes, precedents, cases, theses, decisions, and other writings for legal research;
- Assisting the attorney's preparation of legal arguments, including writing and drafting legal memos, briefs, affirmations, appeals, rebuttals, and other legal documents;
- Interviewing and communicating with clients in the Chinese and English languages;
- Answering clients' inquiries;
- Preparing clients for trials, depositions, hearings, and interviews;
- Preparing clients for court appearances;

³ The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this additional ground for denial.

- Submitting documents to courts, authorities, and adversaries;
- Working on files;
- Recording information and communications;
- Reporting to the attorney;
- Independently handling simple legal matters; and
- Performing work as instructed by the attorney.

The AAO will first address the LCA issue, as the lack of an LCA that corresponds to a petition precludes that petition's approval.

The record contains several claims regarding the complexity and specialization of the duties of the proffered position, as well as the degree of independence the beneficiary would assume within the petitioner's organization. For example, as noted above the petitioner stated in its June 26, 2010 letter that the beneficiary would independently handle simple legal matters. In its November 30, 2010 letter, the petitioner claimed that performance of the duties of the proffered position requires an individual with a comprehensive mastery of communication skills, analytical skills, and sophisticated thinking. In that letter the petitioner also referenced the "complicated" real estate closings, business transactions, and civil litigation in which it engages. The petitioner repeats these claims on appeal and argues additionally that the duties of the proffered position are "specialized and complex."

However, as will now be discussed, these assertions materially conflict with the wage level designated in the LCA that the petitioner submitted with the petition. The LCA submitted by the petitioner in support of the instant position specifies the occupational classification for the position as "Paralegals and Legal Assistants," SOC (O*NET/OES) Code 23-2011.00, at a Level I (entry level) wage. The *Prevailing Wage Determination Policy Guidance*⁴ issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

⁴ Available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed November 23, 2012).

The petitioner's assertions regarding the proposed duties' level of complexity and specialization, as well as the level of independent judgment and responsibility and the occupational understanding required to perform them, are materially inconsistent with the petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the proffered position's demands and level of responsibilities. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It should be noted that, for efficiency's sake, the AAO's discussion and findings regarding the material conflict between assertions in the petition and the LCA wage-level are hereby incorporated as part of this decision's later analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Aside from the adverse impact of the LCA wage-level against the overall credibility of the petition, the AAO will now discuss that additional issue raised by the LCA which was noted at the outset of this decision as precluding approval of the petition, namely, the fact that the LCA does not appear to correspond to the instant petition.

The DOL has clearly stated that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of the information entered in the LCA.

With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

Certification means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, that "[i]t is the employer's responsibility to ensure that ETA [(the DOL's Employment and Training Administration)] receives a complete and accurate LCA."

Further, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) also makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. As reflected in this decision's earlier discussion of the conflict between the assertions of record regarding the proffered position, on the one hand, and, on the other, the position's characterization inherent in the LCA's Level I wage-rate designation, the petitioner has failed to submit an LCA that corresponds to the claimed duties of the proffered position. Specifically, it has failed to submit an LCA whose wage-level corresponds to the level of work and responsibilities that the petitioner claims for the proffered position. Thus, even if it were determined that the petitioner had overcome the director's ground for denying this petition (which it has not), the petition could still not be approved.

As reflected in this decision's earlier discussion regarding the fact that the LCA does not correspond to the petition, that conflict between the petition and the LCA in itself precludes approval of this petition, independently from and regardless of the merits of the petition. Also, as previously noted, the conflict between the LCA and the petition also adversely affects the merits of the petition, because it materially undermines the credibility of the petition's statements with regard to the nature and level of work that the beneficiary would perform.

The AAO will now address the director's determination that the proffered position is not a specialty occupation. 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.

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term “specialty occupation” as one 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 term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position’s title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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 will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

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

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵ The AAO agrees with the petitioner that the duties of the proffered position align with those described in the *Handbook* as typically performed by paralegals and legal assistants.

The *Handbook's* discussion of the duties typically performed by paralegals and legal assistants states, in pertinent part, that paralegals and legal assistants perform a variety of tasks, including conducting legal research on relevant laws, regulations, and legal articles, drafting documents, organizing and presenting information, and writing reports. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Paralegals and Legal Assistants," <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-2> (accessed November 23, 2012).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. In some cases, employers may hire college graduates with a bachelor's degree but no legal experience or education and train them on the job.

Id. at <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-4>.

These statements do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupation. Furthermore, as previously discussed, the petitioner submitted an LCA certified for a comparatively low, entry-level position relative to others within its occupation.

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, 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.

In determining whether there is such a common degree requirement, factors often considered by

⁵ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent.

On appeal, the petitioner submits a printout from the website of the National Federation of Paralegal Associations (NFPA), and quotes the following excerpt from that printout in its appellate brief:

[C]urrent trends across the country, as illustrated through various surveys, indicate that formal paralegal training has become a requirement to secure paralegal employment, and a four-year degree is the hiring standard in many markets. Consequently, NFPA recommends that future practitioners should have a four-year degree to enter the profession. . . .

On the basis of this statement NFPA, the petitioner concludes that "[t]he industry association requirement for [a] paralegal is [possession of a] baccalaureate or higher degree."

These statements made by the NFPA do not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the NFPA's states only that a four-year degree is the "hiring standard" in "many markets." It does not state that such a hiring standard exists across the United States, and it does not specify the specific markets to which its "many markets" comment refers. Second, the NFPA's recommendation of a four-year degree is not equivalent to a normal, minimum hiring standard. However, even if these two factors were not present, the NFPA's comments would still not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the NFPA identifies no specific specialty from which the four-year degree that it recommends must come.

As evidence of the petitioner's eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record contains letters from [REDACTED], both of whom appear to own their own law firms. Each of these three individuals described the duties paralegals typically perform in their law firm and claimed that their firm has always required its paralegals to possess, at minimum, a bachelor's degree "in a related field."

These letters do not satisfy the first alternative prong described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, no evidence has been submitted to demonstrate that any of these companies is "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other

fundamental dimensions.⁶ Nor did they submit any evidence to verify their claims regarding their current and prior employment of degreed paralegals.⁷ 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)). Nor did any of the authors discuss the findings by DOL and published in the *Handbook*, which were discussed above, and which do not indicate that a bachelor's degree, or its equivalent, in a specific specialty, is normally required for positions such as the one proffered here. Nor did they address the petitioner's submission of an LCA certified for an entry-level position.

Although all three authors stated a preference for a bachelor's degree "in a related field," none of them provided examples of the types of fields they consider "related." Moreover, none of the aforementioned letters from law firms attest to, or are accompanied by documentation to establish that, those law firms' practices are representative of industry-wide recruiting and hiring practices with regard to the specific type of paralegal position that is the subject of this petition.

Thus, all three letters are critically deficient as evidence in supporting this criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), as, neither they, nor any other evidence in the record of proceeding, establishes that the authors' firms employment practices are common practices in the petitioner's industry.

Nor do the thirteen job vacancy announcements submitted by the petitioner satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the petitioner has not submitted any evidence to demonstrate that the positions being advertised in these vacancy announcements are "parallel" to the position proffered here.⁸ Second, the petitioner has not submitted any evidence to

⁶ As noted above, by virtue of its provision of NAICS code 541199, the petitioner claimed on the Form I-129 that it is a jury consulting service. However, none of these advertisements appear to have come from a jury consulting service.

⁷ Although Mr. [REDACTED] submitted a copy of an H-1B approval notice, that document does not prove, alone, that his office ever employed the beneficiary of that approval notice. At a more foundational level, because he did not submit a copy of the underlying petition, he did not demonstrate that that petition was for a paralegal position. With regard to the *curriculum vitae*, the AAO notes that the evidentiary weight of a *curriculum vitae* is insignificant. It represents a claim made by the individual submitted it rather than evidence to support that claim, and the record of proceeding lacks documentary evidence to establish or corroborate the claims regarding this individual's education and professional experience made in the *curriculum vitae*. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

⁸ For example, [REDACTED] the unnamed company advertising through [REDACTED], and both of the unnamed companies advertising their vacancies through [REDACTED] require experience. However, as noted above, the wage-level designated by the petitioner on the LCA wage level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation.

demonstrate that any of these advertisements is from a company “similar” to the petitioner.⁹ The petitioner has submitted no evidence to establish that any of these advertisers are similar to the petitioner in size, scope, scale of operations, business efforts, expenditures, or other fundamental dimensions. Nor has the petitioner established that the job-vacancy announcements require a bachelor’s degree, or the equivalent, in a specific specialty.¹⁰ Nor does the petitioner submit any evidence regarding how representative these advertisements are of the industry’s usual recruiting and hiring practices with regard to the position advertised. Again, simply 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 165.¹¹

It is also noted that the unnamed company recruiting a law clerk through the *New York Post* requires a Juris Doctor degree. However, that is not a feature of the proffered position, and that requirement indicates that this position requires a higher level of knowledge and expertise than the position proffered here.

⁹ Again, by virtue of its provision of NAICS code 541199 on the Form I-129, the petitioner claimed to be a jury consulting service. However, none of these advertisements appear to have come from a jury consulting service.

¹⁰ The Law Office of [REDACTED] the first unnamed company advertising its vacancy through [REDACTED], the four unnamed companies advertising their vacancies through [REDACTED] and the unnamed company advertising its vacancy through [REDACTED] require a bachelor’s degree, but they do not require that it be in a specific specialty. The unnamed law firm advertising for a legal secretary and a paralegal in the *New York Times* requires a “college graduate.” However, it does not state that the college degree must be in a specific specialty. The second unnamed company advertising its vacancy through [REDACTED] does not require a bachelor’s degree; it states only that such a degree is “preferred.”

¹¹ Furthermore, according to the *Handbook* there were approximately 256,000 persons employed as paralegals and legal assistants in 2010. *Handbook* at [REDACTED] (last accessed November 23, 2012). 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 thirteen submitted vacancy announcement 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 these 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 these thirteen job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor’s degree in a specific specialty closely related to the positions, it cannot be found that these thirteen job vacancy announcements 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.

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not satisfy 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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary would 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, or the equivalent, in a specific specialty. The duties proposed for the beneficiary are very similar to those outlined in the *Handbook* as normally performed by paralegals and legal assistants, and the petitioner's description of the duties which collectively constitute the proffered position lacks the detail and specificity required to establish that they surpass or exceed the duties performed by typical paralegals and legal assistants in terms of complexity or uniqueness. As noted above the *Handbook* indicates that the performance of these typical duties does not require a bachelor's degree, or the equivalent, in a specific specialty. The AAO finds further that, even outside the context of the *Handbook*, the petitioner has simply not established complexity or uniqueness as attributes of the proffered position, let alone as attributes of such an elevated degree as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the proffered position is a low-level, entry position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have his work reviewed for accuracy.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and with regard to employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. 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 the performance requirements of the proffered position.¹² 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, or the equivalent, in a specific specialty.

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 the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the actual performance requirements of the position necessitate a petitioner's history of requiring a particular degree in its recruiting and hiring for the position. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United

¹² Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within the occupation.

States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

As evidence of eligibility under this criterion the petitioner claimed in its November 30, 2010 letter that “[w]e have hired a similar paralegal in the past for the same duties,” and submits a copy of that individual’s Juris Doctor degree and a copy of a 2006 Form W-2 bearing his or her name.¹³ However, this evidence is not sufficient to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In addition to the factors outlined above which the AAO takes into account when analyzing a proffered position against this criterion, which cut against the proffered position satisfying 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), it is noted that the fact a petitioner may have previously employed one individual in the same or a similar position is not sufficient to establish a history of recruiting and hiring only individuals with at least a bachelor’s degree, or the equivalent, in a specific specialty to perform the duties of the proffered position.

Moreover, the petitioner’s claim made in its November 30, 2010 letter conflicts with its earlier claim made in its June 26, 2010 letter that this is a new position. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

For all of these reasons, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position’s 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.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner’s designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These

¹³ This individual’s Form W-2 indicates that he or she was paid a salary of \$12,500 in 2006. It is noted that this salary barely exceeded the 2006 single-person household federal poverty threshold of \$9,800. *See* U.S. Dep’t of Health and Human Services, “2006 HHS Poverty Guidelines,” <http://aspe.hhs.gov/poverty/06poverty.shtml> (last accessed November 23, 2012).

employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only “moderately complex tasks that require limited judgment.” The fact that this higher-than-here-assigned, Level II wage rate itself indicates performance of only “moderately complex tasks that require limited judgment,” is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer’s job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification,

and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved 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.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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