



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 09 2013 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

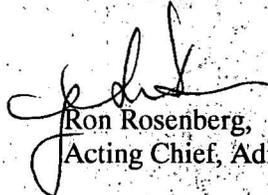
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 Director, Vermont Service Center, (“the director”) denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it is an upscale hair salon established in 2007 with nine employees and a gross annual income of approximately \$357,000 and a negative net annual income of \$39,000. The petitioner seeks to employ the beneficiary in an executive assistant/accounting & finance/marketing & public relations analyst position and 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 February 23, 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 for the petitioner contends that the director’s basis for denial of the petition was erroneous.

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 response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, with counsel’s brief and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO concurs with the director’s ultimate determination 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 remain denied.

As a preliminary matter, the AAO notes that even if the petitioner overcame the basis for the director’s denial of the petition (which it has not), the petition must still be denied.¹ Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit a Labor Condition Application (LCA) that corresponds to the petition. For this additional reason, which is considered as an independent and alternative basis for the denial of the petition, the petition may not be approved.

In this matter, the petitioner stated that it seeks the beneficiary’s services as an executive assistant/accounting & finance/marketing & public relations employee. In a letter appended to the Form I-129, the petitioner stated that the proffered position is a combination of both an executive assistant and public relations specialist and that a minimum of a bachelor of science or a bachelor of art degree was required. The petitioner noted that the position required not only a college degree and superior skills, “but also advanced problem solving skills and the ability to juggle multiple tasks at once.” The petitioner added that the “position is fast moving and

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). It was in this review that the AAO observed additional grounds for denial of the petition, which, although not noted by the director, nevertheless precludes approval of this petition.

demanding, and requires an individual who can think on his/her feet, plan ahead, and get tasks accomplished without delay.” The petitioner indicated: “in light of the complex job duties and responsibilities, [the petitioner] cannot consider an individual without at minimum a bachelor’s degree, extensive computer literacy, and outstanding writing and communication skills.” The petitioner also attached a job description for the proffered position. On the job description the petitioner stated that a bachelor’s degree in business or a closely related field was required and listed the essential job duties and responsibilities as follows:

- Assist salon owner by contributing to strategic planning, operations, and marketing and public relations for [REDACTED]
- Serve salon customers and provide support to stylists by scheduling various hair care services and resolving complaints/conflicts/issues. Handle client concerns/complaints when a stylist or other employee cannot resolve the complaint.
- Greet customers, answer telephone and e-mail inquiries about salon services.
- Monitor activity at the salon to assure that stylists and staff properly attend to customers.
- Handles daily bookkeeping, including cash and credit card transactions and bank deposits.
- Record all credit card receipts and incoming payments on a daily basis for entities. Follow-up on declined credit cards from settlement report. Respond to any charge backs with sufficient documents.
- Process all Credit card payments through [REDACTED] gateway.
- Process all check deposits.
- Report daily cash balances on all bank accounts. Transfer funds among bank accounts as necessary. Track outstanding credit card receipts. Reconcile all bank accounts on a monthly basis.
- Balances the books at the end of the month. Approves and tracks petty expenses, and maintains monthly budgets for inventory, advertising, salon improvements, and other items.
- Works closely with salon owner to lower overhead and maximize profits for the business while maintaining quality service.
- Maintains salon owner’s professional correspondence by both mail and e-mail.
- Researches and utilizes new marketing and PR strategies.
- Invoice all clients for all entities on a timely and accurate basis. Review final bills and make sure all applicable documents/bills are in the show folders and billed back when applicable.
- Maintain updated files for all Vendors/Clients/Customers as necessary.
- Order all necessary salon supplies, including all hair products, hair color, blow dryers, and all products and styling tools used by staff. Monitor inventory for all supplies and order restocks as necessary.

The petitioner also submitted a certified Labor Condition Application (LCA) in support of the instant H-1B petition designating the proffered position in the occupational classification “Executive Secretaries and Executive Administrative Assistants” - SOC (ONET/OES Code) 43-6011 at a Level 1 (entry level) wage. The petitioner noted in its letter appended to the petition

that the proffered position also included duties pertaining to the occupational classification "Public Relations Specialists" - SOC (ONET/OES Code) 27-3031; however, the petitioner did not provide an LCA certified for this occupational classification.

Upon review of the submitted documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on September 26, 2011. With the RFE, the director notified the petitioner that additional documentation was required to establish that the proffered petition met the criteria for H-1B classification. The AAO finds that, in the context of the record of proceeding as it existed at the time the RFE was issued, the request for additional evidence was appropriate, not only on the basis that it was seeking required initial evidence, but also on the basis that it was material in that it addressed the petitioner's failure to submit documentary evidence establishing the proffered position as a specialty occupation.

In the petitioner's December 5, 2011 letter in response to the RFE, the petitioner asserted that the proffered position was not just administrative and while the beneficiary had necessarily performed more mundane, administrative duties, the majority of her time is spent performing professional duties. The petitioner indicated that it had begun to recruit a full-time receptionist to fully take over the administrative duties and relieve the beneficiary from these duties. The petitioner stated that the beneficiary spends about five hours a week on accounting duties, about five hours a week assisting the owner with business related problems and issues, and at least twenty hours a week working on strategic, marketing, financial, and public relations planning, leaving only five to seven hours for the more mundane aspects of the position.

On appeal, counsel for the petitioner continues to assert that the proffered position includes both executive secretary and public relations elements and that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* reports that employers seek individuals with bachelor's degrees to perform the duties of these occupations.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. To make this determination, the AAO turns to the record of proceeding. To ascertain the intent of a petitioner, United States Citizenship and Immigration Services (USCIS) must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. 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."

When determining eligibility for H-1B classification, 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. The petitioner stated throughout the accompanying documentation that the proffered position involved complex job duties and that it required an individual with at least a bachelor's degree to perform these

duties. The petitioner also identified two occupational classifications that correspond to the job duties of the position, although only providing a certified LCA for one of the classifications.

If, however, the petitioner seeks to employ the beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file two separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); DOL, *Employment and Training Administration's Prevailing Wage Determination Policy Guidance (Revised Nov. 2009)*. Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered. In this matter, while the petitioner in response to the RFE claimed that the beneficiary spends 20 hours per week on strategic, marketing, financial, and public relations planning, the petitioner has submitted only an LCA with the prevailing wage for an "Executive Secretaries and Executive Administrative Assistants" - SOC (ONET/OES Code) 43-6011 at a Level 1 (entry level) wage and a Form I-129 that identifies this occupation as the requested position. Accordingly, when fully considered in the context of the entire record of proceedings, including the requisite LCA, the petitioner failed to provide a consistent characterization of the nature of the proffered position and in what capacity the petitioner actually intended to employ the beneficiary.

In addition, the petitioner's description of duties and the level of responsibility inherent within the description when set against the contrary level of responsibility conveyed by the wage level indicated on the LCA submitted in support of the petition also undermines the petitioner's credibility with regard to the actual nature and requirements of the proffered position. That is, the petitioner's assertions regarding the proffered position are questionable when reviewed in connection with the LCA submitted with the Form I-129 petition. As previously mentioned, the petitioner submitted an LCA in support of the instant petition that designated the proffered position under the occupational title of "Executive Secretaries and Executive Administrative Assistants" - SOC (ONET/OES Code) 43-6011 at a Level 1 (entry level) wage.

Wage levels, however, should be determined only after selecting the most relevant O*NET occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.² Prevailing wage determinations start with an entry level wage and progress

² See DOL, *Employment and Training Administration's Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (Rev. November 2009)*, available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.³ The DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.⁴ A Level 1 wage rate is described by DOL as follows:

Level 1 (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.

The petitioner claims that the duties of the proffered position require the successful incumbent to exercise a high level of responsibility and expertise including contributing to strategic planning, operations, and marketing and public relations for the petitioner; however, the AAO must question the level of complexity and independent judgment and understanding required for the position as the LCA is certified for a Level 1 entry-level position. The LCA's wage level indicates the position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

³ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

⁴ See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands and level of responsibilities of the proffered position. 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).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is 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:

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.

[Italics added]. 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. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties of the proffered position, that is, specifically, that corresponds to the level of work and responsibilities that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations. For this additional reason the petition may not be approved.

The petitioner in this matter also, in response to the director's RFE, asserts that it had begun a recruiting process for a full-time receptionist to relieve the beneficiary from the more mundane, administrative duties of the proffered position. However, the petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). The purpose

of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(1); *Matter of Michelin Tire Corp. Id.* When responding to an RFE, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into each basis discussed below for dismissing the appeal.

Next, the AAO will address the issue of whether the petitioner established that the proffered position is a specialty occupation. Based upon a complete review of the record of proceeding, the AAO concurs with the director's ultimate decision 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 Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

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

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 the normal minimum requirement for entry into the particular position. The AAO recognizes the DOL's *Handbook*⁵ as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook's* chapter on secretaries and administrative assistants includes a section on executive secretaries and executive administrative assistants which states:

Executive secretaries and executive administrative assistants provide high-level administrative support for an office and for top executives of an organization. They often handle more complex responsibilities, such as reviewing incoming documents, conducting research, preparing reports, and arranging meetings. They may supervise clerical staff.

The 2012-2013 edition of the *Handbook* indicates only generally that secretaries and administrative assistants may obtain employment with a high-school degree and basic office and computer skills. The *Handbook* also reports that employers of more specialized positions often require applicants to have some knowledge of industry-specific terminology and practices and that community colleges and vocational-technical schools usually offer instruction in these areas. The *Handbook* recognizes:

Qualified administrative assistants who broaden their knowledge of a company's operations and enhance their skills may be promoted to senior or executive secretary or administrative assistant, clerical supervisor, or office manager.

Upon review of the 2010-2011 edition of the *Handbook's* chapter on secretaries and administrative assistants, upon which the petitioner relies, the *Handbook* states generally:

Employers of executive secretaries increasingly are seeking candidates with a college degree, as these secretaries work closely with top executives. A degree related to the business or industry in which a person is seeking employment may provide the jobseeker with an advantage in the application process.

Upon the most generous review of the *Handbook's* past discussion of the occupation of executive secretary or executive administrative assistant, the *Handbook* does not report that a bachelor's degree in a specific discipline is normally required for entry into the occupation in the United States. The current version of the *Handbook* only references community college and vocational-technical schools as avenues for placement in more specialized secretarial or assistant positions and notes that promotion from within is an alternate path to this occupation.

Further, in this matter as observed above, the petitioner specifies in its letter in support of the petition that only a bachelor's degree is required without identifying a particular discipline. On the job description appended to the petitioner's letter, the petitioner indicates that a bachelor's degree in business or a closely related field is sufficient to perform the duties of the proffered

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

position. The 2010-2011 edition of the *Handbook*, upon which the petitioner relies, indicates at most that employers seek a college degree for an executive secretary. A petitioner, however, must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general bachelor's degree of a bachelor's degree with a generalized title, such as business administration, 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 petitioner's acknowledgment that a general business administration degree is sufficient for employment in the proffered position is tantamount to an acknowledgement that the position is not a specialty occupation.

The petitioner also references the DOL's O*NET designation of Job Zone 3 - Education and Training Code for the occupation of an executive secretary and executive administrative assistant; however this designation does not demonstrate that a bachelor's degree in a specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Moreover, the actual discussion regarding the Job Zone 3 designation explains that this zone signifies only that most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Therefore, the O*NET information is not probative of the proffered position qualifying as a specialty occupation.

The described duties of the proffered position also include elements that incorporate the duties of a bookkeeping or accounting clerk. Regarding the educational requirements for a bookkeeping or accounting clerk, the *Handbook* reports:

Most bookkeeping, accounting, and auditing clerks need a high school diploma. However, some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. In 2009, 25 percent of these workers had an associate's or higher degree.

Again, the *Handbook* does not identify a bachelor's degree in a specific discipline as normally required for the position of a bookkeeping or accounting clerk.

Finally, the petitioner references the occupation of a public relations specialist and includes a general description of a couple of duties that relate to public relations and marketing. In response to the director's RFE, the petitioner claims that the beneficiary spends 20 hours per week performing strategic, marketing, financial, public relations planning. The petitioner does not further expound upon the actual day-to-day duties the beneficiary allegedly performs as a public relations specialist. Accordingly, the record lacks substantive evidence demonstrating the individual in the proffered position actually performs public relations/marketing duties. 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)). The petitioner also submits an excerpt of the *Handbook's* chapter on public relations specialists to demonstrate a public relations specialist requires a bachelor's degree. Assuming *arguendo* that the proffered position incorporates the duties of a public relations specialist, a review of the

Handbook's educational requirements for such an occupation finds: "[p]ublic relations specialists typically need a bachelor's degree. Employers usually want candidates who have studied public relations, journalism, communications, English, or business." As the *Handbook* indicates that a disparate group of disciplines, varying from a generalized business to a degree in journalism, are acceptable for employment as a public relations specialist, such an occupation is not a specialty occupation requiring a precise and specific course of study that relates directly and closely to the position in question. Although the petitioner also references the O*NET's Job Zone 4 code for the occupation of a public relations specialist, as observed above, a Job Zone code does not reference particular fields of study and thus does not demonstrate that a bachelor's degree in a specific specialty is required.

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, or a degree in a variety of fields, may be acceptable for a particular occupation, such a general requirement does not establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position. Therefore, absent evidence of a direct relationship between the claimed degrees referenced in the *Handbook* as acceptable degrees for the various occupations that appear to relate to the duties and responsibilities of the proffered position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. We also reference and reiterate our earlier discussion that the LCA for the proffered position indicates the proffered position is a low-level, entry position relative to others within the occupation and that based upon the wage level, the beneficiary is only required to have a basic understanding of the occupation.

As the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree, or the equivalent in a specific specialty, to satisfy this first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. The petitioner has not provided such evidence.

In this matter, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a requirement for at least a bachelor's degree in a specific specialty. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that this position is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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. The record includes a December 5, 2011 letter signed by [REDACTED] a co-owner of two salons. [REDACTED] stated that he has five employees responsible for very similar duties as the beneficiary in this matter and they all have at minimum a bachelor's degree. [REDACTED] further opines that there are many other like-minded salon owners who would only hire college graduates with bachelor's degrees to fill similar positions. [REDACTED] does not provide documentary evidence demonstrating that he employs five personnel with bachelor's degrees, he does not list the duties these individuals purportedly perform, and finally he notes only that a bachelor's degree is required, not a bachelor's degree in a specific discipline. Accordingly, the letter is insufficient to establish an industry-wide standard that salons similar to the petitioner routinely employ and recruit only individuals with a bachelor's degree in a specific specialty.

Based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations 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 petitioner has also failed to 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." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty is not required to perform the duties of the proffered position. The petitioner has not provided evidence to distinguish the proffered position as unique from or more complex than other executive secretaries/bookkeeping clerks/public relations positions, such as those described in the *Handbook*, which can be performed by persons without a specialty degree or its equivalent. The AAO acknowledges the petitioner's intent to grow and expand its business. However, the record in this matter does not provide any evidence that the proffered position requires the application of advanced knowledge in a specific field. In that regard, we hereby incorporate by reference and reiterate the earlier discussion that the LCA for the proffered position indicates the proffered position is a low-level, entry position relative to others within the occupation. Based upon the wage level, the beneficiary is only required to have a basic understanding of the occupation. Furthermore, based upon that LCA wage level, the beneficiary is expected to perform routine tasks that require limited, if any, exercise of independent

judgment. The record does not sufficiently demonstrate how the duties of the proffered position 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.

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

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree 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 when considering this criterion.

To merit approval of the petition under 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. Further, it should be noted that 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. 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 384. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner in this matter, in response to the director's RFE stated that it "choose[s] to employ highly capable, intelligent, educated individuals to assist [the owner]" and asserted that the individual previously employed in the proffered position had a bachelor's degree. On appeal, the petitioner provides a copy of the previously employed individual showing she had obtained a bachelor's degree in fine arts. Also on appeal, counsel for the petitioner asserts that the current employee in the proffered position possesses a bachelor's and master's degree. The petitioner provides a copy of her untranslated⁶ diploma indicating she has a baccalaureate degree in "Artibus"

⁶ Because the petitioner failed to submit certified translations of this document, the AAO cannot determine whether the evidence supports the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

and a Master's degree in Divinity from a United States seminary. The diplomas submitted on appeal do not support a finding that the proffered position requires a bachelor's degree in a specific discipline. To the contrary, the diplomas submitted substantiate that a disparate number of degrees are acceptable for employment in the proffered position. Accordingly, the petitioner's employment history does not establish that the proffered position is a specialty occupation. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Moreover, the AAO again incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position on the LCA as a low, entry-level position relative to others within the occupation. The petitioner designated the position as a Level 1 position (out of four possible wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation."⁷ Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and/or complex duties as such a position would likely be classified at a higher-level, requiring a significantly higher prevailing wage.

Upon review of the complete record, the petitioner has not provided sufficient probative evidence to establish that the nature of the specific duties outlined is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements 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 additional, supplement requirements 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. Thus, the appeal will be dismissed and the petition denied for this reason.

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, (noting that the AAO conducts appellate review on a *de novo* basis).

⁷ See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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