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



U.S. Citizenship
and Immigration
Services

Date: JUN 20 2013 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

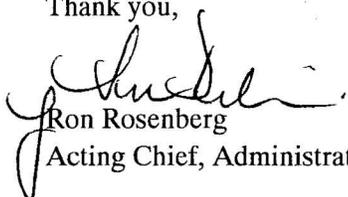
ON BEHALF OF PETITIONER:

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, California Service Center, 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 describes itself as a gymnastics and preschool facility, and seeks to employ the beneficiary as a music teacher. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, finding that the position was not a specialty occupation.

On appeal, counsel for the petitioner submits a brief and additional evidence, and contends that, contrary to the director's findings, the proffered position is a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 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. 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, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of

the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In a letter dated September 28, 2011, the petitioner explained that it is a gymnastics and preschool facility. Specifically, it stated that its gymnastics program "includes a recreational and competitive program, for girls and boys, ages 2-18," and that its academic preschool program "includes a curriculum with physical education, music, and computers." It further claimed to employ a staff of 20 in the areas of gymnastics, preschool, and education.

Regarding the proffered position, the petitioner stated that it wished to employ the beneficiary as a music teacher to complement its current staff of six teachers. Regarding the duties of the position, the petitioner claimed that the beneficiary would perform the following duties:

- Evaluate and grade students' class work, performances, projects, assignments, and papers.
- Explain and demonstrate artistic techniques.
- Prepare students for performances, exams, or assessments.
- Prepare and deliver lessons to preschool aged children on topics such as acting techniques, fundamentals of music, and art history.
- Organize performance groups and direct their rehearsals.
- Prepare course materials such as syllabi, homework assignments, and handouts.
- Initiate, facilitate, and moderate class discussions.
- Keep abreast of developments in the field by reading current literature, talking with colleagues, and participating in professional conferences.
- Advise students on academic and vocational curricula and on career issues.
- Maintain student attendance records, grades, and other required records.

The petitioner also stated that the beneficiary possessed a Bachelor's Degree in Music, Piano Performance and Technology of Music and Related Arts from [REDACTED] as well as a Master's Degree in Media Arts from the [REDACTED]. The petitioner further claimed that a bachelor's degree was required to perform the duties of the proffered position, and that its other six preschool teachers also had bachelor's degrees in the appropriate fields.

In an October 21, 2011 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position is a specialty occupation, including but not limited to a more detailed description of the proffered position. In a response dated December 2, 2011, counsel addressed the director's queries. Counsel's letter restated the previously-submitted list of duties set forth above, and reiterated the beneficiary's qualifications. Counsel also

submitted letters from the petitioner's owner/director, its preschool manager, and a part-time teacher in support of the contention that a degree in a specific specialty is required to perform the duties of the proffered position as well as the duties of all other teaching positions in the petitioner's organization.

On December 17, 2011, the director denied the petition, determining that the petitioner had failed to establish that the proffered position was a specialty occupation. The director found that the proffered position of preschool teacher did not require at least a bachelor's degree in a specific specialty as the minimum requirement for entry into the occupation.

On appeal, counsel contends that the director's findings were erroneous. Specifically, counsel contends that the director misinterpreted the legal standard for classifying a specialty occupation and disregarded evidence submitted by the petitioner to establish the beneficiary's eligibility.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree in a specific specialty.

In reviewing the record, the AAO observes that the critical element is not the title of the position or 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.

On the Labor Condition Application (LCA) submitted with the petition, the petitioner claims that, while the job title of the proffered position is "Music Teacher," the SOC (ONET/OES) occupation title is that of "Preschool Teacher, Except Special Education." To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO first turns to the 2012-2013 online edition of the *Handbook* for its discussion of preschool teachers, the section most akin to the duties of the proffered position as described in the record. As stated by the *Handbook*, this occupational category is described as follows:

Preschool teachers typically do the following:

- Prepare children for kindergarten by introducing concepts they will explore further in kindergarten and elementary school
- Work with children in groups or one on one, depending on the needs of children and the subject matter
- Plan and carry out a curriculum that targets different areas of child development, such as language, motor, and social skills

- Organize activities so children can learn about the world, explore interests, and develop talents
- Develop schedules and routines to ensure children have enough physical activity, rest, and playtime
- Watch for signs of emotional or developmental problems in children and bring problems to the attention of parents
- Keep records of the students' progress, routines, and interests, and keep parents informed about their child's development

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed. "Preschool Teachers," <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-2> (last visited May 14, 2013).

The *Handbook's* section pertaining to the educational requirements for preschool teachers states:

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Preschool Teachers," <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4> (last visited May 14, 2013).

The *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. Although the *Handbook* indicates that a bachelor's degree in early childhood education or a related field is generally required for preschool teachers employed in public schools, the petitioner in this instance is a privately-operated preschool. Moreover, the petitioner's preschool manager, [REDACTED] further stated in a letter dated November 2, 2011 that the petitioner does not require its specialty teachers to hold a degree in early childhood education. Rather, [REDACTED] claimed that its specialty teachers hold degrees in the appropriate fields in which they teach (i.e., music, physical education, and computers).

The *Handbook* does not require at least a bachelor's degree in a specific specialty for entry into the occupation of preschool teacher in a private institution. The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Furthermore, the petitioner's claim set forth in the letter from [REDACTED] in which it confirms that a degree in early childhood education is not required, directly undermines the contention that the proffered position is a specialty occupation by virtue of its classification as a preschool teacher under SOC Code 25-2011. The petitioner's comments suggest that, while the LCA was certified for the position of preschool teacher, the proffered position of music teacher is more akin to a self-enrichment teacher under SOC Code 25-3021. Specifically, self-enrichment teachers, according to the *Handbook*, "instruct in a variety of subjects that students take for fun or self-improvement, such as music and foreign languages. These classes generally do not lead to a degree or certification, and students take them voluntarily to learn new skills or gain understanding of a subject." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Self-Enrichment Teachers," <http://www.bls.gov/ooh/education-training-and-library/self-enrichment-teachers.htm#tab-2> (last visited May 14, 2013).

Therefore, in addition to its failure to establish that a degree in a specific specialty is required to perform the duties of the proffered position, the petition must also be denied based on the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, the petitioner and counsel affirmatively state that the proffered position is not that of a traditional preschool teacher, who "plays videos and takes children to the bathroom." Rather, it claims that the duties of the proffered position focus on music lessons, recitals, and related instruction and, as such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 25-3021, not SOC (O*NET/OES) Code 25-2011, in order for it to be found to correspond to the petition.¹

¹ It is noted that, where a petitioner seeks to employ a beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it

Nevertheless, even if an LCA certified for a self-enrichment teacher had been submitted, the proffered position would still not qualify as a specialty occupation. According to the *Handbook*,

There are no formal education requirements, but employers generally require self-enrichment teachers to have experience in the subject they teach. Some employers prefer workers who have teaching experience.

Education

In general, there are few educational or training requirements for self-enrichment teachers beyond having expert knowledge of the chosen subject. However, self-enrichment teachers may be required to have formal training in disciplines where educational programs are available, such as music or foreign languages.

Work Experience

Self-enrichment teachers generally need to have some experience in the field in which they teach. For example, a pottery teacher should have some experience in designing and making pottery. They can get this experience through formal work experience, but they can also get it through volunteer work or personal hobbies. Formal education programs may prefer to hire workers who have some teaching experience.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Self-Enrichment Teachers," <http://www.bls.gov/ooh/education-training-and-library/self-enrichment-teachers.htm#tab-4> (last visited May 14, 2013).

Therefore, even if a certified LCA for the position of self-enrichment teacher had been submitted at the time of filing, the petition could not be approved under this criterion, since the *Handbook* does not state that a degree in a specific specialty is required for entry into the occupational category of self-enrichment teacher.

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); U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. 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.

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. Factors often considered by USCIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Neither the petitioner nor counsel submitted any evidence that responds to this criterion. The record, therefore, is devoid of evidence that there is a common, industry-wide recruiting and hiring practice of hiring degreed music teachers for positions in private preschools. The petitioner, therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist her in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether actual performance of the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. It is noted that the petitioner specifically emphasizes eligibility under this criterion by arguing that all of its specialty preschool teachers have degrees in the appropriate fields. Specifically, the petitioner submitted copies of diplomas and transcripts for its teachers, asserting that this documentation established that it routinely hires degreed individuals with appropriate degrees for its teaching positions.

As stated above, the director found the initial evidence submitted with the petition insufficient to establish eligibility, and consequently a detailed RFE was issued. The RFE specifically requested the petitioner to submit evidence establishing eligibility under this criterion, including but not limited to:

- (1) Position announcements posted by the petitioner, both currently and in the past, demonstrating that the petitioner required its applicants to have a

- minimum of a baccalaureate or higher degree or its equivalent in a specific specialty;
- (2) Evidence of its past employment practices, specifically with regard to its employment of individuals with degrees in music and media arts for the proffered position (i.e., the number of persons previously or currently employed in the position, as well as evidence in the form of pay records, quarterly wage reports, and transcripts); and
 - (3) Documentary examples of the petitioner's products or services, such as business plans promotional materials, evaluations, etc. that supported the petitioner's claim that it normally required a degree in a specific specialty for entry into the proffered position.

In response to the RFE, the petitioner submitted letters from three of its staff members. A letter from [REDACTED] its owner/director, stated that the petitioner's school has always been on the "cutting edge" of preschool curriculum in the State of Illinois, and consequently it has hired specialized instructors to enhance the experience of its students. [REDACTED] stated that she has routinely required the school's music teachers to "possess at least a BA in music." A letter from [REDACTED] the petitioner's manager, explained that the petitioner's teachers "are hired according to their area of specialty," and a letter from [REDACTED] a part-time physical education teacher for the petitioner, claimed that her degree in physical education served as an example of how her degree uniquely qualified her to perform the duties of her teaching position. No additional evidence was submitted.

These letters are not sufficient to establish eligibility under this criterion. Simply concluding that it routinely requires its teachers to have degrees related to the subject matter they teach, absent evidence to support this contention, is insufficient to meet the burden of proof under this criterion. 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)).

While the AAO notes that additional documentation, such as an advertising flyer, payroll records, photos, DVDs, and additional letters of support are submitted on appeal, this evidence will not be considered. As stated above, the director specifically requested this type of evidence in the RFE, yet the petitioner failed and/or refused to submit such documentation. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that 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 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 required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than music teachers that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.²

Here the AAO finds that the duties of the position described encompass routine teaching duties associated with preschool teachers, as well as instruction provided by self-enrichment teachers. While the petitioner suggests that the duties of the proffered position are sufficiently specialized and complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO finds that, to the extent that they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

² It must be noted that the petitioner has designated the proffered position as a Level II position on the submitted Labor Condition Application (LCA), indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. A Level II position is one without specialized and complex duties; a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

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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 remains denied.