



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 21 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:

[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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a small "for" written below it.

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 television commercial production firm. To employ the beneficiary in what it designates as an executive producer position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal is whether the petitioner has demonstrated that the proffered position qualifies as 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, 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a

specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an executive producer position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-2012, Producers and Directors. The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in Film and Video from [REDACTED]. Counsel also provided a letter, dated November 8, 2011, from [REDACTED] who identified himself as the petitioner's producer. That letter states:

The [person in the proffered position] for the [petitioner] will be responsible for supervising entire production efforts of the company. He/she will coordinate various aspects of production, such as audio and camera work, scenes, music, timing, writing and staging, as well as overseeing the development and editing of the script. [] He/she will select and hire cast and staff members and lead meetings to discuss production progress. He/she will review film, recording and/or rehearsals to ensure conformance to production and broadcast standards. He will also establish management policies, production schedules and operating budgets for production. Finally, he will represent the company in negotiation with independent producers and various subcontracting companies.

The petitioner's producer further stated: "Due to the nature of the duties performed by the [person in the proffered position], the position requires a minimum of a bachelor's degree equivalent in Production or [a] related field."

On February 27, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted (1) a letter dated March 19, 2012, from [REDACTED] the president of a company that appears to be the petitioner's parent; (2) résumés of other employees of the petitioner; (3) a letter, dated April 4, 2012, from [REDACTED] (4) an evaluation of the proffered position; (5) two letters from people in the film industry; (6) five vacancy announcements placed by other companies; (7) a vacancy announcement placed by the petitioner in the classified section of a newspaper; and (8) printouts, taken from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* and the O\*NET OnLine Internet site.

[REDACTED] March 19, 2012 letter states that, for the proffered position, the petitioner requires "at least a Bachelors [sic] Degree in Film, Film & Visual Arts, Film Production, or a related academic field." [REDACTED] cited the evidence pertinent to three other employees as evidence that it always requires a bachelor's degree for similar positions.

The résumés provided pertain to [REDACTED] who [REDACTED] identifies as a Line Producer/Production Coordinator with a bachelor's degree in visual arts and film studies, a producer with a bachelor's degree in media productions, and an assistant production manager with a bachelor's degree in animation and visual effects, respectively.

In his April 4, 2012 letter, the petitioner's producer, [REDACTED], stated that the petitioner needs a qualified executive producer, that tremendous responsibility and accountability will be placed on that position, and that the position requires, therefore, attainment of a bachelor's degree in film, film & visual arts, film production, or a related academic field.

[REDACTED] letter contains the following description of the duties of the proffered position:

(1) Preproduction Planning, Strategizing and Client Advisor

In every film production, the planning, scheduling, and vision casting process is perhaps the most integral to ensure effective and accurate results for our clients. As the majority of our clientele are sizeable multinational corporations and renowned music artists in Asia, the commercial and marketing demands underlying our film projects are often times tremendously specified and complex. Additionally, the financial facets of our production projects and organizational aspects of such endeavors require extensive, multifaceted, and extremely demanding planning and scheduling sessions. As such [beneficiary] must facilitate, organize, and oversee [pre-production] meetings with our clients, in addition to his hired production team.

Once an agreement in principle is executed with our corporate clients, a preliminary planning and strategizing session is scheduled by the [beneficiary]. [The beneficiary] will lead these questions, communicating and interacting with our client's representatives to discuss their vision, goals, and specific desires for our commercial or video production. The producer must intimately understand the client's desire for artistic rendition, corporate vision for their advertisement/video, end goals for the product, in addition to other specific requests. [The beneficiary] and his staff will also direct appropriate and cogent questions in furtherance of producing top quality production which accurately address the desire of our clientele. The discussion will include video and advertisement themes, screenplay, roles of actors and models, the timeframe for completion, and a rough estimate of finances and expenses.

Following the initial consult, the [beneficiary] will lead efforts in strategizing, brainstorming, and planning all aspects of the project with him [sic] team members. The candidate will assess, project, and compile finances and estimates necessary to effectively produce client's films. This position must also formulate a list of projected staff members and actors, wage requirements, and identify suggested filming locales and venues in addition to cost of securing said premises. Additionally, an approximate shooting and production schedule will be configured to act as a timeline by which the team will reference to stay within project timing goals.

The aforementioned duties are complex and specialized as [the beneficiary] must lead fruitful efforts to comprehensively plan, organize, and otherwise prepare for the initiating of filming, which necessitates an advanced understanding of the filming and cinematography, story/screenwriting, lighting and color, and production. This knowledge can most readily be attained through attainment of a Bachelor's degree in Film, Film & Visual Arts, Film Production, or a related academic field, in which a candidate would complete formal courses such as Cinematography, Lighting, Directing, Screenwriting, Production, Drawing, Drafting, and Design.

(2) Finalizing Storyboard, Approve Writing, Scripts, Shooting Locations, Actors

Prior to the initiation of the project, the [beneficiary] will schedule and direct a final preplanning meeting with the clients to present the final projected storyboard for the film to be produced, a comprehensive estimate of financial and scheduling commitments, as well as other

incidental items for discussion. Additionally, the [beneficiary] will introduce a rough draft of the script for voice overlays, or actor lines within the filming, for approval by the company, instituting desired changes or deletions according to client wishes. The candidate will also convey a number of actors and models which will potentially represent the brand of the clients, presenting photos, prior works, and backgrounds of the applicants. Furthermore, this final planning meeting will include discussion of project particulars, confirming and elaborating upon artistic direction and themes to be instilled in said project, and any adjustments necessary for clientele satisfaction.

Furthermore, the [beneficiary] will present before the clientele tenable filming location options within the United States, including within his analysis projected screenshots, potential variations/benefits/costs of each locale, in addition to cost and travel expenses. Upon approval of the client, the [beneficiary] will lead efforts to secure the desired shooting locations will be initiated as soon as possible [sic], including location leases, municipal licensing, extraneous fees, and equipment rentals. In addition, our Executive Producer will also ensure all means and forms of communication during the project are clearly delineated, establishing appropriate contact points at both companies, guaranteeing viable and rapid communication.

In furtherance of these complicated and advanced Production duties, the candidate should have been formally trained in courses such as Screenwriting, Production, Directing, Cinematography, Lighting, Acting, and Drafting. As such, our candidate must have attained at a very minimum, a Bachelor's degree in Film, Film & Visual Arts, Film Production, or a related academic discipline.

In performing these critical tasks for our company, [the beneficiary] will spend approximately four (4) hours in an average workweek, or 10% of his work time executing these duties.

### (3) Obtain and Hire Project Staff, Manage Workforce

According to the needs of the specified project for [the petitioner], the [beneficiary] must obtain a capable and reliable staff of set, editing, and production specialists for each project. As each project is uniquely planned and configured, so must each employee be carefully selected for their skill set and unique understanding of filming and production, and the candidate will be vested with final authority to create positions for the project, and fill them will highly skilled

workers. As mentioned previously, the [beneficiary] must organize the workforce, which will comprise partially of our company's employees, in addition to outside temporary contract hires to handle certain areas of production expertise. Generally speaking, the [beneficiary] will appoint associate producers, set directors, actors, models, set up crew, lighting staff, audio staff, video/filming staff, support staff, make-up and hair, and stunt replacements.

The [beneficiary] will oversee the entire hiring process, and interview key personnel to guarantee creative and filming visions and skill will align with that of the current project. The position will set wage levels, employee insurance, liability insurance, execute employment contracts, temporary benefits, and performance bonuses. Additionally, the candidate will be responsible to reprimand and fire employees for underperformance, failure to meet expectations, and/or malfeasance. The [beneficiary] would then be responsible for finding immediate replacements as not to delay production scheduling.

Pursuant to hiring and managing a workforce specializing in film production, [the person in the proffered position] must have a fundamental understanding of the skill sets involved in specified employment positions, and thereby be able to ascertain an interviewee's appropriateness for a position. Therefore, [the person in the proffered position] is required to have taken courses in Lighting, Cinematography, Editing, Visual/Audio, Directing, Acting, Design, Drafting, and color and Design. Such courses are standard fundamental curriculum elements of Film, Film & Visual Arts, Film Production or a related major and are therefore minimum requirements for [the proffered position].

#### (4) Administrate and Oversee Production Financial and Business Decisions

In a crucial duty imperative to the smooth filming and production operation of our clients' commercials and videos, the [beneficiary] must plan, estimate, and organize all financial considerations pertinent to the completion of the project. [The beneficiary] must administrate and oversee the necessary costs of production to ensure the fluid and seamless operation of the project. As a result, the candidate must formulate with his staff a working budget of all project operations, including all expense of remuneration, equipment and prop rental, necessary purchases, and premise leases. Additionally, he must estimate all relevant costs and formulate financial strategies to produce our films in a cost effective manner, without sacrificing our scrupulous

artistic aspirations for the project. The [beneficiary] must ensure cost effective pricing, secure labor or rental contacts, and adjust financial figures and prognostications as necessary for filming and production completion. Furthermore, [the beneficiary] must secure sufficient funds from the client or [the petitioner] in order to capitalize the project, and to resolve any financial issues or conflicts with all parties involved. Finally, [the beneficiary] must communicate, negotiate, and disclose information to labor unions or guilds certifying legality of all respect of production, and guarding against dispute, possible legal actions, and fines/penalties as a result of the operations.

In order to properly understand the challenges of financial production considerations, our candidate should have taken, as the very least, formal courses in Production, thereby necessitating [the person in the proffered position] to have attained at least a Bachelors [sic] degree in Film, Film & Visual Arts, Film Production, or a related field.

In performing these critical tasks for our company, [the beneficiary] will spend approximately six (6) hours in an average workweek, or 15% of his work time executing these duties.

(5) Oversee Filming and Production Set, Configure Shooting Schedule

[The beneficiary] must oversee all production operations of our client's requested advertisements/videos, supervising the filming, editing, and finalizing processes according to our allotted timeline and budgetary restraints. According to the agenda and timetable set by the Executive Producer and his staff, the project will operate under their ultimate guidance and leadership. On a daily basis, the [beneficiary] will meet with the project team to discuss progress reports, the daily itinerary and schedule, and to inform relevant parties of special responsibilities for the near future. The candidate's ability to plan, administrate, and communicate complex aspects of filming, directing, and editing is absolutely critical for the timely completion of each project. As such, the candidate must be familiar with all aspects of production, and all employees staffed to labor on his projects.

The [beneficiary] will oversee all filming, scripting, cinematographic, and thematic aspects of filming and shooting for the project, managing the daily sets, posturing the proper filming, camera, lighting, and audio employees to ensure efficient images capturing. The producer must institute his extensive knowledge of camera angles, filming technology, digital or 9mm filming equipment, lighting and lighting

equipment, sound and audio, cosmetics, apparel, hairdressing, in addition to every other administrative aspect of producing an apex quality video/commercial. As such, [the person in] this position must be adept at communicating and scheduling the proper personnel to be present when needed on the set to prevent production inefficiency. Thus, the [beneficiary] must be present on set everyday [sic], and is responsible to address every issue or mishap that may occur on the filming set or in the editing room, and ameliorate problems with their advanced knowledge of every critical aspect of filming. Furthermore, the [person in the proffered position] must have the ability to adjust to unexpected and shifting circumstances on the filming set in order to decisively address a rectifying measure. Clearly, these duties necessitate paramount organizational skills, advanced leadership abilities, and an unparalleled ability to communicate and problem solve.

As a critical set of duties which are tremendously complex and require significant amounts of advanced filming and production techniques, [the person in the proffered position] must have completed a formal academic regimen which included courses such as: Lighting, Cinematography, Audio, Production, Visual Communication, and Acting. Accordingly, our candidate must have obtained at least a Bachelor's degree in Film, Film & Visual Arts, Film Production, or a related field.

In performing these critical tasks for our company, [beneficiary] will spend approximately twenty (20) hours in an average workweek, or 50% of his work time executing these duties.

(6) Supervise Editing, Final Cuts, and Postproduction Presentations

Lastly, utilizing an expert knowledge of the editing and finalizing process, the [beneficiary] will oversee the editing and finalization processes. This position will direct his editing employees to ensure their work will incorporate and retain overarching themes planned beforehand, and will supervise the work, suggesting alternations [sic] and corrections if need be. They will make sure the editing team is working and producing work product according to product scheduling assuring that the final product will be produced according to client's expectations. Additionally, the [beneficiary] must be the final authority on the finished product, carefully reviewing the shot and edited films, and either approving their release or mandating necessary changes.

Finally, the [beneficiary] will make a final formal presentation to the client, displaying and explaining the finished commercial or video set for public release. The [beneficiary] will address any final product concerns, production questions, or complaints that clients may have with [the petitioner's] work.

As it relates to this key complex duty, [the person in the proffered position] must have obtained a formal education in Editing, which is a standard curriculum of Bachelors [sic] degrees in Film, Film & Visual Arts, Film Production, or a related field of study.

In performing these critical tasks for [the petitioner], [the beneficiary] will spend approximately two (2) hours in an average workweek, or 5% of his work time executing these duties.

[redacted] stated that the duties described demonstrate that the person in the proffered position, "must possess an academic knowledge and skill sets involving production, lighting, directing, audio/sounds, color, filming technology, storyline and screenwriting, and acting techniques." The petitioner's producer concluded:

Therefore, our candidate can function properly only if equipped with our minimum standard of a Bachelor's degree in Film, Film & Visual Arts, Film Production, or a related field of study . . . .

[redacted] letter also cited the résumés provided pertinent to [redacted] as evidence that the petitioner requires a bachelor's degree for the proffered position and noted that his own résumé was also provided, showing that he has a "Film Degree."

The evaluation of the proffered position was prepared by the director of the Film Studies program at [redacted]. With reference to the duties of the proffered position, the evaluator stated that the proffered position requires, "at least a Bachelor's degree in Film and Television Studies, or its equivalent."

The two letters from people with other companies in the film industry both state that a producer position requires a bachelor's degree. One states that the degree must be in film, video, film production or a related field. The other states that the degree must be in film, visual arts, production, or a similar field. One letter adds that such a degree is even more important for executive producers than it is for other producers.

The director denied the petition on May 18, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More

specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the evidence previously submitted demonstrates that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The AAO will now discuss the application of the additional, supplemental requirements of 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 if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The petitioner sought to rely on information found at the O\*NET OnLine Internet site. The O\*NET section provided by the petitioner pertinent to Producers indicates that such positions are in Job Zone Four, that is, that they requires considerable preparation. About those positions, O\*NET states: "Most of these occupations require a four-year bachelor's degree, but some do not." Further, even as to those positions that do require a bachelor's degree, O\*NET does not suggest that the requisite degrees must be in a specific specialty closely related to the position.

The AAO recognizes the *Handbook*, also cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

In the "Producers and Directors" chapter, the *Handbook* provides the following description of the duties of those positions:

### **What Producers and Directors Do**

Producers and directors are in charge of creating motion pictures, television shows, live theater, and other performing arts productions. They interpret a writer's script to entertain or inform an audience.

### **Duties**

Producers and directors typically do the following:

- Select scripts
- Audition and select cast members and the film or stage crew
- Approve the design and financial aspects of a production

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

- Ensure that a project stays on schedule and within budget
- Approve new developments in the production

Large productions often have associate, assistant, and line producers who share responsibilities. For example, on a large movie set an executive producer is in charge of the entire production, and a line producer runs the day-to-day operations. A TV show may employ several assistant producers, whom the head or executive producer gives certain duties, such as supervising the costume and makeup team.

Similarly, large productions usually employ several assistant directors, who help the director with tasks such as making set changes or notifying the performers when it is their time to go onstage. The specific responsibilities of assistant producers or directors vary with the size and type of production they work on.

**Producers** make the business and financial decisions for a motion picture, TV show, or stage production. They raise money for the project and hire the director and crew. The crew may include set and costume designers, a musical director, a choreographer, and other workers. Some producers may assist in the selection of cast members. Producers set the budget and approve any major changes to the project. They make sure that the film or show is completed on time, and they are responsible for the way the finished project turns out.

**Directors** are responsible for the creative decisions of a production. They select cast members, conduct rehearsals, and direct the work of the cast and crew. During rehearsal, they work with the actors to help them portray their characters better.

Directors work with designers to build a project's set. During a film's postproduction phase, they work closely with film editors to make sure that the final product comes out the way the producer and director want.

Although directors are in charge of the creative aspects of a show, they ultimately answer to the executive producer.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Producers and Directors," <http://www.bls.gov/ooh/entertainment-and-sports/producers-and-directors.htm#tab-2> (last visited June 19, 2013).

The duties that the petitioner's president and its director attributed to the proffered position are entirely consistent with the duties of a producer position with some additional duties that the *Handbook* attributes to director positions. The AAO finds that the proffered position is a producer position, which some additional direction duties.

The *Handbook* states the following about the educational requirements of producer and director positions:

### **How to Become a Producer or Director**

Most producers and directors have a bachelor's degree and several years of work experience in a related occupation, such as an actor or writer.

#### **Education**

Producers and directors usually earn a bachelor's degree. There are no formal training programs for producers or film directors, but some major in writing, acting, journalism, or communication while in college. Some producers earn a degree in business, arts management, or nonprofit management.

Many stage directors complete a degree in theater, and some go on to receive a Master of Fine Arts (MFA) degree. Classes may include directing, playwriting, and set design, as well as some acting classes. The National Association of Schools of Theater accredits more than 150 programs in theater arts.

#### **Work Experience**

Producers and directors usually have several years of work experience in a related occupation. Many directors begin as actors, writers, film editors, or choreographers, and over the years they learn about directing. Many begin as assistants to successful directors on a film set. For more information, see the profiles on actors, writers and authors, film and video editors and camera operators, or dancers and choreographers.

In nonprofit theaters, most aspiring directors begin as assistant directors, a position that is usually treated as an unpaid internship.

Producers might start out working in a theatrical management office, as a business manager, or as an assistant or another low-profile job in a TV or movie studio. Some were directors or worked in another role behind the scenes of a show or movie.

#### **Advancement**

As a producer's or director's reputation grows, he or she may work on bigger and more expensive projects.

#### **Important Qualities**

**Communication skills.** Producers and directors must coordinate the work of many different people to finish a production on time and within budget.

**Creativity.** Because a script can be interpreted in different ways, directors must decide how they want to interpret it and then how to physically represent the script's ideas.

**Leadership skills.** A director instructs actors and helps them portray their characters in a believable manner.

**Management skills.** Producers must find and hire the best director and crew for the production and make sure that all involved do their jobs effectively and efficiently.

*Id.* at <http://www.bls.gov/ooh/entertainment-and-sports/producers-and-directors.htm#tab-4> (last visited June 19, 2013).

The *Handbook* does not suggest that entry into producer positions requires a minimum of a bachelor's degree in a specific specialty or its equivalent. It indicates that most, but not all, producers have a bachelor's degree. It further indicates that those degrees may be in writing, acting, journalism, or communication.

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

Here, not only does the *Handbook* indicate that a bachelor's or higher degree is not necessarily required for entry into a producer position, it also indicates that, of those producers who have a bachelor's degree, they may have a degree in writing, acting, journalism, or communication. The subjects in that array are not closely related to each other, nor are they all closely related to a position as a producer. Journalism, for instance, is not closely related to movie production.

The evaluation of the proffered position stated that, based on the duties of the proffered position, it requires at least a Bachelor's degree in Film and Television Studies, or its equivalent. The AAO observes that the evaluation is conclusory. It does not list any reference materials on which the evaluator relied as a basis for his conclusion that the proffered position requires a bachelor's degree. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment.

Further, those duties are entirely consistent with the *Handbook* description of the duties typical to producer positions, and the *Handbook* does not concur with the evaluator that such a position would require a minimum of a bachelor's degree in film and television studies or its equivalent. The evaluator did not address that conflict, either explicitly or implicitly.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). The AAO does not find that the evaluation provided merits great deference.

In addition, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of video and film production, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Finally, as was noted above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as that the *Handbook* suggests that some producer positions do not require such a degree.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Counsel did provide two letters from people employed in the petitioner's industry. The two letters state that a producer position requires a specialized bachelor's degree. Taken at face value, those letters would support the proposition that the proffered position is a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

However, those two letters are not accompanied by any documentary evidence to support their claims and those letters are at odds with the information in the *Handbook*, that a producer position *does not* require a specialized bachelor's degree. The writers provided no reason to believe that positions as producers with companies that make commercial advertisements (such as the petitioner does and such as the companies that those letter writers work for do) are much more likely to require a specialized degree than producer positions with companies making other types of films and videos. The two letters provide no other explanation that reconciles those two divergent assertions about the educational requirements of a director position. The AAO therefore accords those two letters no great deference.

Further, one letter adds that a specialized degree is even more important for executive producers than it is for other producers. The AAO observes, again, that the petitioner has designated the proffered position as a Level I position, that is, an entry-level position for an employee who has only basic understanding of the occupation. This is not consistent with the assertion that its requirements are more stringent than other producer positions.

The petitioner also submitted five vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Digital Producer for [REDACTED], an advertising agency, requiring a "Bachelor's degree in related field" and "3 years experience in internet or related media marketing";
2. Associate Broadcast Producer for [REDACTED], an advertising agency, requiring a "Four-year degree and 2-4 years of agency experience;
3. Producer for [REDACTED] television station, requiring a "Bachelor's Degree in communication or related field and at least 2-5 years of producing experience . . . ."

4. Video Producer for [REDACTED] requiring a bachelor's degree and "3-5 years experience in advertising, communications, marketing, or public relations, preferably at a college or university; and
5. Associate [REDACTED], a company that provides cable TV content, requiring a bachelor's degree and one to three years of experience.

None of the vacancy announcements provided appear to have been placed by organizations similar to the petitioner. As such, they have no direct relevance to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied only if the petitioner demonstrates that parallel positions with similar organizations in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the advertisements provided establish, at best, that a bachelor's degree is required for most of the positions posted, but that a bachelor's degree or the equivalent in a *specific specialty* is often not. Specifically, the second and fifth advertisements state only that a bachelor's degree or other four-year degree (no specific specialty) is required.

Further still, all of the advertised positions are for experienced candidates whereas the proffered position is an entry-level position for an employee who has only basic understanding of the occupation, as indicated on the LCA where the petitioner designated the proffered position as a Level I position. 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). To demonstrate that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I positions, entry-level positions for an employee with only a basic understanding of the position, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and unequivocally required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from five announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>2</sup>

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<sup>2</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from five job postings with regard to determining the common educational requirements for entry into parallel positions in similar home care organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and

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

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

The record contains various assertions that the proffered position is unusually complex or unique. For instance, the petitioner's producer stated: "The need for direction and leadership at our nascent Los Angeles branch adds significant complexity and challenge to its top executive producer position." The petitioner's producer also stated that because the proffered position requires knowledge of production, lighting, directing, audio, color, filming technology, storyline and screenwriting, and acting techniques, it can only be performed by a person with a bachelor's degree in film, film & visual arts, film production, or a related field of study.

However, the record contains little evidence that would differentiate the work of the proffered position from the work of producers in general. The duties of the proffered position (such as preproduction planning, scheduling, and casting; approving scripts, shooting locations, and actors; managing the workforce; overseeing production, financial, and business decisions; overseeing filming and production; and supervising editing and postproduction presentations) are described in terms of functions common to producer positions in general, and so have not been shown to be more complex or unique than the duties of other producer positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I producer, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of film or video production. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some producer positions do not require such a degree.

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estimates of error").

As such, even if the job announcements supported the finding that the position of executive producer for a television commercial production firm required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While related courses may be beneficial in performing many of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

For all of these reasons, the petitioner has not demonstrated that the proffered position is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent, and has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.<sup>3</sup>

The record contains a vacancy announcement the petitioner placed to fill an assistant producer position. That vacancy announcement states, "Film Major Required," but not that a successful applicant must necessarily have graduated with a minimum of a bachelor's degree.

The record contains the résumé of [REDACTED] which states that he works for the petitioner as a Line Producer/Production Coordinator, that he attended the [REDACTED] from 2005 to 2007, and that he has a "Diploma of Advertising" from the [REDACTED]. The record contains no documentary evidence to corroborate the assertion that [REDACTED] has the degree claimed, or to show that a Diploma of Advertising from [REDACTED] is equivalent to at least a bachelor's degree.

The record contains the résumé of [REDACTED] which states that he works for the petitioner as a Producer/Production Manager, and that he studied multimedia at the [REDACTED]. The location of that institution is unknown to the AAO. That résumé further states

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<sup>3</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

that [REDACTED] was awarded a bachelor's of communications degree in media productions by the [REDACTED]. Whether that degree is equivalent to a bachelor's degree earned in the United States is unknown to the AAO. Further, the record contains no documentary evidence to corroborate the assertion that [REDACTED] has the claimed degree.

The record also contains the résumé of [REDACTED] which states that she works in Production for the petitioner. It further states that she attended [REDACTED], [REDACTED] from 2003 to 2006; [REDACTED] from 2007 to 2008; and the [REDACTED], where she earned a Certificate II in Screen, during 2008. Finally, it states that she received a bachelor's degree in animation and visual effects from [REDACTED] during 2011. Whether [REDACTED] certificate or her degree is equivalent to a bachelor's degree earned in the United States is unknown to the AAO. Further, the record contains no documentary evidence to corroborate the assertion that [REDACTED] has the certificate or the degree.

The record contains the résumé of [REDACTED] who is apparently the same person previously identified as [REDACTED] a producer for the petitioner. That résumé states that [REDACTED] attended [REDACTED] School, but not that he received a degree there. Further, the record contains no documentary evidence to demonstrate either that he attended that school or that he graduated from it.

Further, the record contains no evidence that the four people for whom résumés were provided are the only producers, assistant producers, or other production workers whom the petitioner has previously hired or, if they are not, no evidence of the educational qualifications of its other producers, assistant producers, or other production employees. Further, although the petitioner's president stated that the petitioner always requires a minimum of a bachelor's degree in film, film & visual arts, film production, or a related academic field for the proffered position, the record contains no evidence pertinent to anyone the petitioner has ever hired to fill the proffered position, executive director, and no evidence, in fact, that it has ever hired anyone to fill the position.

For all of the reasons above, the petitioner has not demonstrated that it normally requires a degree or its equivalent for the proffered position, and has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. As was observed above, preproduction planning, scheduling, and casting; approving scripts, shooting locations, and actors; managing the workforce; overseeing production, financial, and business decisions; overseeing filming and production; and supervising

editing and postproduction presentations have not been shown to be more specialized and complex than the duties of other producer positions. Further, as was also noted above, the petitioner filed the instant visa petition for a Level I producer position, an entry-level position for an employee with only a basic understanding of the duties of a producer. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to movie or video production, especially as the *Handbook* indicates that some producer positions require no such specialized degree or equivalent.

Notwithstanding the length of the description of the proposed duties, those duties do not reveal complexity and specialization above those of positions in the occupation that are not usually associated with knowledge that requires at least a bachelor's or higher degree in a specific specialty. That is, the descriptions of the duties of the proffered position do not convey the relative degree of specialization and complexity required to satisfy this criterion.

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

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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. The appeal will be dismissed and the petition denied.

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