



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUN 26 2013**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, 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 publicly supported nonprofit organization. To employ the beneficiary in what it designates as an art director position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, 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 art director position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-1011.00, Art 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 industrial design from [REDACTED] and a master's degree in jewelry design from [REDACTED]. An evaluation in the record states that the beneficiary's degrees are equivalent to a U.S. bachelor's degree in industrial design and a master's of fine arts degree in jewelry design, respectively.

Counsel also provided a letter, dated June 8, 2011, from the petitioner's president, with the visa petition. That letter contains the following description of the duties of the proffered position:

1. Oversee, direct, develop and plan entire art related activities, such as art museum, Annual Craft Show, Asian Art Festival, Children Annual Art Contest, sponsored by the Center (approximately 20% of daily work time);
2. Plan and organize the acquisition, storage, and exhibition of collections and related materials, including the selection of exhibition themes and designs (approximately 20% of daily work time);
3. Develop and maintain the Center's marketing effort, cataloging, and presentation, using graphic art tools (approximately 10% of daily work time);
4. Provide information from the [petitioner's] holdings to other curators and to the public (approximately 5% of daily work time);

5. Train and supervise curatorial, fiscal, technical, and research volunteers, as well as interns for the museum (approximately 5% of daily work time);
6. Negotiate and authorize purchase, sale, exchange, or loan of collections (approximately 5% of daily work time);
7. Plan and conduct special research projects in Asian artifacts or expertise (approximately 5% of daily work time);
8. Conduct or organize tours, workshops, and instructional sessions to acquaint individuals with an institution's facilities and materials (approximately 5% of daily work time);
9. Confer with the board of directors to formulate and interpret policies, to determine budget requirements, and to plan overall operations (approximately 5% of daily work time); and
10. Attend meetings, conventions, and civic events to promote use of [the petitioner's] services, to seek financing, and to maintain artistic community alliances (approximately 5% of daily work time)[.]

The AAO observes that the list of duties provided accounts for only 85% of the beneficiary's daily work time.

The petitioner's president also stated:

The minimum requirement for this position is a Bachelor's Degree in Fine Art, Design, artistic conservation, or its U.S. equivalent. This degree provides the candidate with the requisite knowledge and sophistication to comprehend the complex knowledge of the theory and artistic value required to compose, exhibit, and perform combinatory works of artistic conservation and display. Moreover, the knowledge of principle and methods for exhibition for artifacts and scriptures, and the measurement of artifacts are crucial. Also, the candidate needs to be able to integrate Korean history and cultural background with some artistic value.

On January 17, 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. The director outlined the specific evidence to be submitted.

In response, counsel submitted a letter, dated April 9, 2012, from the petitioner's president, and counsel's own letter, also dated April 9, 2012.

In his April 9, 2012 letter, the petitioner's president stated that the petitioner had never previously employed anyone in the proffered position. He also provided the following "expanded" list of the duties of the proffered position:

1. Oversee, direct, develop and plan entire art related activities. [The beneficiary] will be expected to design the Petitioner's programs for arts, crafts, music, Korean language and history.
2. Design educational curriculum including course material, instructional timeline and educational goals. Develop Korean music, art and language courses. Plan and organize acquisition, storage and exhibition of collections and related materials including the selection of exhibit themes and designs (approximately 20% of work time);
3. Direct graphic design and production team. Gain the Petitioner new business through innovative presentations. Develop and maintain the Petitioner's marketing effort, cataloging, and presentation, using graphic art tools (approximately 10% of daily work time);
4. Research and write detailed literature for public consumption on Korean art and culture. Provide information from the institution's holdings to other curators and to the public (approximately 5% of daily work time);
5. Oversee the work of camp counselor's. Train and supervise curatorial, fiscal, technical and research volunteers. Recruit, interview and hire interns for the museum (approximately 5% of daily work time);
6. Mentor, direct, & enhance efforts of team that relies on creativity. Develop and maintain guidelines and design standards. Liaise between art direction and studio designers, photographers, illustrators and other external collaborators. Negotiate and authorize purchase, sale, exchange and loan of collections (approximately 5% of daily work time);
7. Perform art outreach. Conduct workshops on Korean art and heritage. Plan and conduct special research projects in Asian artifacts or expertise (approximately 5% of daily work time);
8. Design syllabus, determine class size, prepare materials. Conduct and organize tours, workshops, and instructional sessions to acquaint individuals with the Petitioner's facilities and materials (approximately 5% of daily work time);
9. Analyze art market's outlook. Formulate and analyze Petitioner's policies, determine budget requirements, and plan overall operations (approximately 5% of daily work time);
10. Design publicity literature for events. Attend meetings, conventions and civic reports to promote use of Petitioner's services. Maintain and enhance artistic community alliances (approximately 5% of daily work time).

In his own April 9, 2012, counsel stated, "Perhaps the strongest evidence that the proffered position is a specialty occupation is . . . that USCIS approves thousands of art-related H-1Bs every year." However, counsel provided no evidence that all, or any, of those other visa petition cases contain facts similar to those of the instant visa petition. Counsel also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that art director positions require a bachelor's degree.

Finally, counsel provided (1) a poster of a Korean heritage event, (2) pictures from the petitioner's previous art events, (3) a printout from the petitioner's website, (4) a printout from the [REDACTED] [REDACTED] pertinent to the petitioner's activities, (5) an announcement of the petitioner's participation in the 2012 [REDACTED] (6) miscellaneous newspaper clippings and literature, and (7) journals published by the petitioner. Counsel asserted that those submissions are evidence that the nature of the specific duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

The director denied the petition on June 28, 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). In that decision, the director analyzed the proffered position as an exhibit designer position, rather than as an art director position.

On appeal, counsel stated:

The petitioner asserts that the duties and responsibilities [of the proffered position] more accurately the definition [sic] of a curator rather than an exhibit designer. The [Dictionary of Occupational Titles, hereinafter DOT] notes that a curator directs and coordinates activities concerned with instructional, acquisition, exhibitory, research and public service objectives of an institution. A curator formulates and interprets the policies [sic] of the institution, arranges the loan or acquisition of collections from other institutions and develops and organizes new collections to expand and improve the organizations educational goals. A curator writes articles and assists in planning an [sic] implementing the research and public service activities of the institution.

The petitioner asserts that [the director] acted arbitrarily by applying evaluating [sic] the instant position using the exhibit designer criterion. The DOT definition clearly notes that curators require an SVP of 9, requiring a minimum of a baccalaureate level of education in a specific specialty for entry into that occupation.

The petitioner asserts that the educational aspects of the [proffered] position clearly differentiate it from the exhibit designer position sued in the [director's] analysis.

The AAO observes that the LCA provided in this matter states that the proffered position corresponds to an art director position. On appeal, counsel asserted that the proffered position corresponds to a curator position, and sought to have the visa petition approved on that basis. Art director and curator are different jobs. They are not identical. They are not interchangeable.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided on appeal did not clarify or provide more specificity to the original submissions, but rather asserted that the beneficiary would work in a position different from that previously asserted. The significance of the fact that the proffered position is apparently not an art director position will be considered further below.

The AAO also notes, preliminarily, that in his June 8, 2011 letter, the petitioner's president stated: "The minimum requirement for [the proffered position] is a Bachelor's Degree in Fine Art[s], Design, artistic conservation, or its U.S. equivalent."

"Fine Arts" include painting, sculpture, architecture, music and poetry. Pursuant to some definitions, it also includes drama, dance, painting, sculpture, music, and photography. However broadly or narrowly defined, however, the term "Fine Arts" includes a wide array of subjects and does not, per se, constitute a specific specialty. Therefore, an educational requirement that may be satisfied by a degree in any of the fine arts would not typically be considered a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and a position with so general an educational requirement would not typically be considered a specialty occupation position.

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 two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Absent evidence to the contrary, the fields of design, artistic conservation, and all of the fine arts are not considered closely related specialties, and the petitioner fails to establish how these fields are directly related to the duties and responsibilities of the proffered position. Accordingly, as such evidence fails to establish a minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion. This is sufficient reason, in itself, to find that the proffered position does not qualify as a specialty occupation, to dismiss the instant appeal, and to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue in order to identify other evidentiary deficiencies that preclude approval of this petition.

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 may be satisfied if a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

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

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

What Art Directors Do

Art directors are responsible for the visual style and images in magazines, newspapers, product packaging, and movie and television productions. They create the overall design and direct others who develop artwork or layouts.

Duties

Art directors typically do the following:

- Determine how best to represent a concept visually
- Determine which photographs, art, or other design elements to use

¹ 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.

- Develop the overall look or style of a publication, an advertising campaign, or a theater, television, or film set
- Supervise design staff
- Review and approve designs, artwork, photography, and graphics developed by staff members
- Talk to clients to develop an artistic approach and style
- Coordinate activities with other artistic or creative departments
- Develop detailed budgets and timelines
- Present designs to clients for approval

Art directors typically oversee the work of other designers and artists who produce images for television, film, live performances, advertisements, or video games. They determine the overall style or tone desired for each project and articulate their vision to artists who submit images, such as illustrations, graphics, photographs, charts and graphs, or stage and movie sets.

Art directors work with art and design staffs in advertising agencies, public relations firms, and book, magazine, or newspaper publishers to create designs and layouts. They also work with producers and directors of theater, television, or movie productions to oversee set designs. Their work requires them to understand the design elements of projects, inspire other creative workers, and keep projects on budget and on time. Sometimes, they are responsible for developing the budgets and timelines.

Art directors work in a variety of industries, and the type of work they do varies somewhat with the industry. However, almost all art directors set the overall artistic style and visual image to be created for each project, and oversee a staff of designers, artists, photographers, writers, or editors who are responsible for creating the individual works that collectively make up a completed product.

The following are some specifics of what art directors do in different industries:

In publishing, art directors typically oversee the page layout of newspapers and magazines. They also choose the cover art for books and periodicals. Often, this work includes Web publications.

In advertising and public relations, art directors ensure that their clients' desired message and image is conveyed to consumers. Art directors are responsible for the overall visual aspects of an advertising or media campaign and may coordinate the work of other artistic or design staff, such as graphic designers.

In movie production, art directors collaborate with directors to determine what sets will be needed for the film and what style or look the sets should have. They hire and supervise a staff of assistant art directors or set designers to complete designs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Art Directors," <http://www.bls.gov/ooh/arts-and-design/art-directors.htm#tab-2> (last visited June 24, 2013).

The proffered position is clearly not an art director position, not just because counsel appears to have withdrawn that assertion, but because the *Handbook* states:

Art directors work with art and design staffs in advertising agencies, public relations firms, and book, magazine, or newspaper publishers to create designs and layouts. They also work with producers and directors of theater, television, or movie productions to oversee set designs. Their work requires them to understand the design elements of projects, inspire other creative workers, and keep projects on budget and on time. Sometimes, they are responsible for developing the budgets and timelines.

Art directors work in a variety of industries, and the type of work they do varies somewhat with the industry. However, almost all art directors set the overall artistic style and visual image to be created for each project, and oversee a staff of designers, artists, photographers, writers, or editors who are responsible for creating the individual works that collectively make up a completed product.

The duties of the proffered position do not include being responsible for the visual style and images in any such publication or broadcast medium and record evidence does not demonstrate that the beneficiary will be responsible for the creation of a particular product that would require her to oversee a staff of designers, artists, photographers, writers, and/or editors. The AAO finds that the proffered position is not an art director position.

On appeal, counsel appeared to assert that the proffered position should be analyzed as a curator position.

In the "Curators, Museum Technicians, and Conservators" chapter, the *Handbook* provides the following description of the duties of curator positions:

What Curators, Museum Technicians, and Conservators Do

Curators oversee collections, such as artwork and historic items, and may conduct public service activities for an institution. Museum technicians and conservators prepare and restore objects and documents in museum collections and exhibits.

Duties

Curators, museum technicians, and conservators typically do the following:

- Acquire, store, and exhibit collections
- Select the theme and design of exhibits
- Develop or set up exhibit materials
- Design, organize, or conduct tours and workshops for the public
- Attend meetings and civic events to promote the institution
- Clean objects using cleansers, solvents, and soap solutions
- Direct and supervise curatorial, technical, and student staff
- Plan and conduct special research projects

Many objects and documents are important or historically significant. Curators, museum technicians, and conservators preserve and organize the display of these materials.

The following are occupational specialties:

Curators manage museums, zoos, aquariums, botanical gardens, nature centers, and historic sites. The **museum director** often is a curator. Curators direct the acquisition, storage, and exhibit of collections, including negotiating and authorizing the purchase, sale, exchange, or loan of collections. They also may authenticate, evaluate, and categorize the specimens in a collection.

Curators often oversee and help conduct the institution's research projects and related educational programs.

Today, an increasing part of a curator's duties involves fundraising and promotion, which may include writing and reviewing grant proposals, journal articles, and publicity materials. In addition, many curators attend meetings, conventions, and civic events.

Most curators specialize in a particular field, such as botany, art, or history. Those who work in large institutions may be highly specialized. A large natural history museum, for example, might employ separate curators for its collections of birds, fishes, insects, and mammals.

Some curators take care of their collections, some do research related to items in the collection, and others do administrative tasks. In small institutions with only one or a few curators, one curator may be responsible for a number of tasks, from taking care of collections to directing the affairs of the museum.

Museum technicians, commonly known as **registrars**, help curators by preparing and taking care of museum items. Registrars also may answer questions from the public and help curators and outside scholars use the collections.

Conservators manage, preserve, treat, and document works of art, artifacts, and specimens—work that may require substantial historical, scientific, and archaeological research. Conservators document their findings and treat items to minimize their deterioration or to restore them to their original state.

Conservators usually specialize in a particular material or group of objects, such as documents and books, paintings, decorative arts, textiles, metals, or architectural material. They use x rays, chemical testing, microscopes, special lights, and other laboratory equipment and techniques to examine objects, determine their condition, and decide on the best way to preserve them.

In addition to their conservation work, conservators participate in outreach programs, research topics in their specialty, and write articles for scholarly journals. They may be employed by a museum or other institution that has objects needing conservation, or they may be self-employed and have several clients.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Curators, Museum Technicians, and Conservators," <http://www.bls.gov/ooh/Education-Training-and-Library/Curators-and-museum-technicians.htm#tab-2> (last visited June 24, 2013).

The description of the duties of the proffered position suggests that the proffered position is a curator position. However, the primary duty of curators, as reported by the *Handbook*, is to oversee collections, such as artwork and historic items. The *Handbook* further reports that curators perform this duty in museums, zoos, aquariums, botanical gardens, nature centers, and historic sites. The petitioner is not a museum or any similar venue. The record contains no evidence that the petitioner has a substantial art collection or any comparable collection which the beneficiary would oversee and preserve. Under these circumstances, the AAO does not find that the proffered position is a curator position, as counsel urged on appeal.

In the "Recreation Workers" chapter, the *Handbook* provides the following description of the duties of those positions:

What Recreation Workers Do

Recreation workers design and lead leisure activities for groups in volunteer agencies or recreation facilities, such as playgrounds, parks, camps and senior centers. They may lead activities in areas such as arts and crafts, sports, games, music, and camping.

Duties

Recreation workers typically do the following:

- Plan and organize activities for groups or recreation centers
- Explain the rules of the activities and instruct participants
- Enforce safety rules to prevent injury
- Administer first aid if needed
- Modify activities to suit the needs of specific groups, such as seniors
- Keep the equipment used in activities organized

The specific responsibilities of recreation workers vary greatly with their job title, their level of training, or the state they work in. The following are examples of types of recreation workers:

Camp counselors work directly with children in residential (overnight) or day camps. They often lead and instruct children and teenagers in a variety of outdoor activities, such as swimming, hiking, horseback riding, or camping. In residential camps, counselors also provide guidance and supervise daily living and socialization. Some counselors may teach campers special subjects, such as archery, boating, music, drama, or gymnastics.

Camp directors typically supervise camp counselors, plan camp activities or programs, and do the administrative tasks that keep the camp running.

Activity specialists provide instruction and coaching primarily in one activity, such as art, music, drama, swimming, or tennis. These workers may work in camps or anywhere else where there is interest in a single activity.

Recreation leaders are responsible for a recreation program's daily operation. They primarily organize and direct participants, schedule the use of facilities, keep records of equipment use, and ensure that recreation facilities and equipment are used properly. They may lead classes and provide instruction in a recreational activity, such as tennis.

Recreation supervisors oversee recreation leaders. They often serve as a point of contact between the director of a park or recreation center and the recreation leaders. Some supervisors also may direct special activities or events or oversee a major activity, such as aquatics, gymnastics, or one or more performing arts.

Directors of recreation and parks develop and manage comprehensive recreation programs in parks, playgrounds, and other settings. Directors usually serve as technical advisors to state and local recreation and park commissions and may be responsible for recreation and park budgets.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Recreation Workers," <http://www.bls.gov/ooh/personal-care-and-service/recreation-workers.htm#tab-2> (last visited June 24, 2013).

The *Handbook* reports that, within the broader occupational category of recreation worker, "activity specialists provide instruction and coaching primarily in one activity, such as art, music, drama, swimming, or tennis." The beneficiary will be providing instruction in art. Further, the *Handbook* states, "[Activity specialists] may work in camps or anywhere else where there is interest in a single activity," which is consistent with the evidence in the record about the proffered position. The AAO finds that, in the context of the petitioner's operations, the beneficiary would more likely than not perform the duties of an activity specialist within the broader occupational category of recreation worker.

The *Handbook* states the following about the educational requirements of recreation worker positions:

How To Become a Recreation Worker

The education and training requirements for recreation workers vary with the type of job but many workers have a bachelor's degree.

Education and Training

Although a degree can be helpful, for many part-time recreation workers, such as camp counselors and activity specialists, other qualities are more important. These qualities include a worker's maturity level, experience leading activities, ability to work well with children or the elderly, and ability to ensure safety of participants.

Most seasonal and part-time workers learn through on-the-job training. Specialized training or experience in a particular field, such as art, music, drama, or athletics, may help in obtaining a job.

Most recreation workers who work full time need at least a bachelor's degree. Recreation workers who work full time include those working in administrative positions or for large organizations.

Degrees in parks and recreation or in leisure studies may prepare a student better than a liberal arts degree. However, either type of degree may be enough for some jobs.

Associate's and bachelor's degree programs in parks and recreation, leisure studies, or related fields are available at colleges and universities. Master's or doctoral degree programs also may be available, but are less common.

All programs include courses in management, community organization, supervision, administration, and development of programs for populations with specific needs, such as the elderly or disabled. Students may specialize in areas such as therapeutic recreation, park management, outdoor recreation, industrial or commercial recreation, and camp management.

Employers hiring recreation workers in supervisory or administrative positions often prefer applicants with work experience and at least a master's degree in parks and recreation, business administration, or public administration. Most require at least an associate's degree in recreation studies or a related field.

Important Qualities

Communication skills. Recreation workers must be able to communicate well to work with large groups of people while maintaining order and safety. They also must be able to motivate people to be active and to learn or improve skills.

Leadership skills. Recreation workers should be able to lead both large and small groups. They often lead activities for people of all ages and abilities.

Physical strength. Recreation workers need to be physically fit. Their job requires a considerable amount of movement because they often demonstrate activities while explaining them.

Problem-solving skills. Recreation workers need strong problem-solving skills. They must be able to create and reinvent activities and programs for all types of participants.

Speaking skills. Recreation workers must be able to communicate well. They often work with large groups of people and need to maintain order and safety.

Certification

The National Recreation and Park Administration (NRPA) provides certification for recreation workers. To qualify for the certification exam, individuals must follow one of four pathways:

- Earn a bachelor's degree in a major such as recreation, park resources, or leisure services from a program accredited by the NRPA
- Earn a bachelor's degree in a related major from any institution and, if the program is not accredited, have at least 1 year of experience

- Earn any other bachelor's degree and have at least 3 years of relevant full-time work experience
- Have at least 5 years of full-time experience in the field. Some recreation jobs require certification. For example, a lifesaving certificate is required for teaching or coaching water-related activities. These certifications are available from organizations such as the YMCA or Red Cross. Specific requirements vary by job and employer.

Advancement

As workers gain experience, they may get promoted to positions with greater responsibilities. Recreation workers with experience and managerial skills may advance to supervisory or managerial positions. Eventually, they may become directors of a recreation department.

Id. at <http://www.bls.gov/ooh/personal-care-and-service/recreation-workers.htm#tab-4> (last visited June 24, 2013).

The *Handbook* makes clear that recreation worker positions do not require a minimum of a bachelor's degree in a specific specialty or the equivalent. Although it states that "Most recreation workers who work full-time need at least a bachelor's degree," the *Handbook* does not indicate that a degree in any specific specialty is necessary. Further, it indicates that an associate's degree in recreation studies or a related field suffices for some positions.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the duties that the petitioner's president ascribes to the proffered position indicate a need for a range of knowledge of art, recreation, administration, and management, 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.

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 in a specific specialty, or its equivalent, 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..

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms 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.

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.

A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including associate's degrees, and including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In his April 9, 2012 letter, the petitioner's president stated that the petitioner had never previously hired anyone to fill the proffered position. Therefore, the record contains no evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).²

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 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. The duties of the proffered position, such as overseeing, directing, developing, and planning art-related activities; organizing and conducting tours, workshops, and instructional sessions, conferring with the board of directors to formulate and interpret policies, to determine budget requirements, and to plan overall operations; and attending meetings, conventions, and civic events to promote use of the petitioner's services, to seek financing, and to maintain artistic community alliances, contain no indication of a nature so specialized and complex that they are usually associated with a minimum of a bachelor's degree in a specific

² 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").

specialty or its equivalent. In other words, the proposed duties have not been described with specificity sufficient to show that they are more specialized and complex than the duties of activity specialist and other recreation worker positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. Therefore, 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.

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