



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUN 27 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,

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 states that its type of business is "Representation of actors, writers, directors, producers, designers in motion pictures, television and stage." In order to employ the beneficiary in what it designates as a "TV Literary Agent Assistant" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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 a "TV Literary Agent Assistant" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1011, Agents and Business Managers of Artists. The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a master's of fine arts degree in film production from [REDACTED] in California. Counsel also submitted, *inter alia*, (1) a letter, dated October 14, 2011, from the petitioner's Chief Administrative Officer (CAO); (2) a document that appears to be an offer of employment; (3) two vacancy announcements placed by the petitioner; and (4) copies of two vacancy announcements placed by other companies.

In his October 14, 2011 letter, the petitioner's CAO provided the following description of the duties of the proffered position:

Main duties (75% of time)

- Obtaining information from "buyers," i.e., studios, networks, cable TV channels, and TV production companies, with regard to "Open Writing Assignments" (OWA's) and "Open Directing Assignments" (ODA's) for original programming, and recommending appropriate agency clients to agents for submission to buyers.

- Reading and analyzing television scripts obtained from buyers, and making judgments as to which writer clients possess the writing style and sensibility for specific rewrite jobs.
- Reading and analyzing clients' television scripts and giving notes and suggestions for improvements to clients which make the material more marketable and/or appropriate for specific buyers.
- Turning timely information obtained by maintaining strong relationships with buyers' staff into opportunities for agents and clients.
- Locating and suggesting to clients and buyers "source material," i.e., magazine articles, true stories, or news items, which may serve as the basis for television projects.
- Placing calls for agents and screening of all incoming calls;
- Maintaining call logs and taking detailed messages/notes;
- Setting and confirming meetings for agents and clients;
- Generating script submissions for potential buyers, per the direction of the agent;
- Ordering scripts and/or client video samples to be sent to producers/studios;
- Reading scripts and writing evaluations called "coverage" for use in judging a TV project's potential in the marketplace;
- Keeping an accurate log of all incoming submissions;
- Interacting with [the petitioner's] accounting department to track money due to clients;
- Maintaining and updating company databases;
- Creating and/or maintaining booking reports, deal memos, and client employment agreements;

Other duties (25% of time)

- Processing new client paperwork;
- Preparing Expense Reports and Travel Requisition forms
- Taking on additional tasks and responsibilities as assigned.

The petitioner's CAO cited information from the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as evidence that the proffered position requires a bachelor's degree. He also cited the Foreign Labor Certification Data Center's OnLine Wage Library for the same proposition; however, he referred to that site's "Summary Report for Agents and Business Managers of Artists, Performers, and Athletes (13-1011)" in error. The AAO believes that he meant to refer to the O\*Net OnLine Internet site. The information from the *Handbook* and from O\*Net OnLine will be addressed below.

The petitioner's CAO further stated that the proffered position "requir[es] the theoretical knowledge and practical expertise gained through at least a Bachelors [sic] degree (or equivalent) in a related field." He did not specify what subjects would be sufficiently closely related to the proffered position to qualify one to work in it. Further, although the petitioner's CAO referred to a spreadsheet showing the educational qualifications of other people employed by the petitioner in positions similar to the proffered position, that spreadsheet was not then provided.

The document that appears to be an employment offer is not signed. It reiterates the duties of the proffered position, but does not state who was offering employment to whom. Although it states that the position being offered requires a "Bachelor's degree in [a] related field," it does not indicate what fields would be considered sufficiently closely related to the proffered position to qualify one for the position.

One of the vacancy announcements placed by the petitioner is for a Talent Assistant. The other is for an Assistant to Broadcasting Agent position. Both state that they require a four-year degree, but neither states that they require a degree in any specific specialty or range of specialties.

On February 23, 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 (1) the previously described spreadsheet; (2) a letter, dated March 28, 2012, from [REDACTED] the executive director of the [REDACTED], a trade association of talent agents; (3) a letter, dated March 30, 2012, from [REDACTED], the head of television in the Literary Management division of [REDACTED] (4) a letter, dated April 10, 2012, from the petitioner's CAO; and (5) profiles of six people printed from [REDACTED], a social media website.

The previously described spreadsheet states that the petitioner currently employs [REDACTED], [REDACTED], and [REDACTED] as assistants in its "LA – TvLit" department, and that they have bachelor's degrees in English/Cinema, Theatre/Dance, Communications, Communications, and Business/Cinematic Arts, respectively.

The letter from [REDACTED] states:

The Literary Agent Assistant position is a traditional entry[-]level position to this professional field. Employers generally require completion of a Bachelors [sic] degree with a major in a relevant and correlated area such as English, Communications, Business, Law, Film or Theater.

The letter from [REDACTED] states:

The Literary Agent Assistant position is the traditional entry[-]level position to this professional field. It generally requires completion of a Bachelors [sic] Degree with a major in a highly relevant and correlated major such as English, Communications, Film or Theater.

The petitioner's CAO's April 12, 2012 letter provided the following amended list of duties of the proffered position:

- Obtaining information from "buyers," i.e., studios, networks, cable TV channels, and TV production companies, with regard to "Open Writing Assignments" (OWA's) and "Open Directing Assignments" (ODA's) for original programming, and recommending appropriate agency clients to agents for submission to buyers. (6%)
- Reading and analyzing television scripts obtained from buyers, and making judgments as to which writer clients possess the writing style and sensibility for specific rewrite jobs. (5%)
- Determining the appropriate classification and genre for the scripts, and applicability to current demands in the industry (5%)
- Analyzing and assessing the storytelling qualities of the literary work and its translation to the film or television medium. (6%)
- Providing a qualified opinion on whether a script merits pitching to high level motion picture and/or television producers for implementation. (9%)
- Analyzing and assessing the skills of the writer to determine whether the agency should consider him for her for future primary assignments even if the current script is inappropriate to the immediate placement requirements. And if so determine the appropriate area or genre where his or her skills can be utilized. (5%)
- Reading and analyzing clients' television scripts and giving notes and suggestions for improvements to clients which make the material more marketable and/or appropriate for specific buyers. (7%)
- Turning timely information obtained by maintaining strong relationships with buyers' staff into opportunities for agents and clients. (5%)
- Locating and suggesting to clients and buyers "source material," i.e., magazine articles, true stories, or news items, which may serve as the basis for television projects. (6%)
- Placing calls for agents and screening of all incoming calls. (5%)
- Maintaining call logs and taking detailed messages/notes; (2%)
- Setting and confirming meetings for agents and clients; (2%)
- Generating script submissions for potential buyers, per the direction of the agent; (1%)
- Ordering scripts and/or client video samples to be sent to producers/studios; (1%)
- Reading scripts and writing evaluations called "coverage" for use in judging a TV project's potential in the marketplace; (8%)

- Keeping an accurate log of all incoming submissions; (1%)
- Interacting with [the petitioner's] accounting department to track money due to clients; (2%)
- Maintaining and updating company databases; (2%)
- Creating and/or maintaining booking reports, deal memos, and client employment agreements; (8%)
- Processing new client paperwork; (3%)
- Preparing Expense Reports and Travel Requisition forms (5%)
- Taking on additional tasks and responsibilities as assigned. (10%)

The petitioner's CAO also cited the letters from [REDACTED] and [REDACTED] as evidence that a requirement of a minimum of a bachelor's degree in a related field is common to the petitioner's industry in parallel positions among similar organizations.

As was noted above, the petitioner provided linkedin.com profiles for six people; they are: [REDACTED] and [REDACTED]

The director denied the petition on June 20, 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 presented does, in fact, satisfy more than one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO observes, initially that some of the duties of the proffered position are *clearly* not specialty occupation duties. Even if the proffered position might otherwise qualify as a specialty occupation position, "Placing calls for agents and screening of all incoming calls," "Maintaining call logs and taking detailed messages/notes," "Setting and confirming meetings for agents and clients," "Keeping an accurate log of all incoming submissions," "Interacting with [the petitioner's] accounting department to track money due to clients," "Processing new client paperwork," and "Preparing expense reports and Travel Requisitions forms," for instance, appear to be clerical or secretarial in nature, and do not appear to require a minimum of a bachelor's degree in a specific specialty or its equivalent. Whether "Taking on additional tasks and responsibilities as assigned" would be limited to additional specialty occupation duties has not, of course, been demonstrated.

According to the duty description contained in the petitioner's CAO's April 10, 2012 letter, "Placing calls for agents and screening of all incoming calls," "Maintaining call logs and taking detailed messages/notes," "Setting and confirming meetings for agents and clients," "Keeping an accurate log of all incoming submissions," "Interacting with [the petitioner's] accounting department to track money due to clients," "Processing new client paperwork," and "Preparing expense reports and Travel Requisitions forms," together, would require 20% of beneficiary's time in the proffered

position, and "Taking on additional tasks and responsibilities as assigned" would require an additional 10%.

To qualify as a specialty occupation, the petitioner must establish, *inter alia*, that the duties of the proffered position require a bachelor's or higher degree in a specific specialty or its equivalent. *See* section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Furthermore and as previously stated by the Service, "The H-1B classification is not intended . . . for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts." 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998); *but cf.* 8 C.F.R. § 214.2(l)(3)(v)(C) (permitting L-1A managers or executives that are coming to the United States to open a "new office" in the United States to perform some non-qualifying duties during the one year period it takes the new office to meet the "doing business" standard).<sup>1</sup> In other words and in contrast to the L-1A new office regulations, no provision in the law relevant to H-1B nonimmigrants provides an initial grace period during which non-qualifying specialty occupation duties may be performed.

Nevertheless, while there is no provision in the law for specialty occupations to include non-qualifying duties, the AAO views the performance of duties that are incidental<sup>2</sup> to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature. Anything beyond such incidental duties, however, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.

In the instant case, a substantial portion of the duties of the recurring duties of the proffered position are clearly nonqualifying, and the proffered position cannot qualify as a specialty occupation position. This is a sufficient reason, in itself, to dismiss the instant appeal and deny the instant visa petition.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and an analysis of whether the evidence in the instant case satisfies any of the alternative criteria of that regulation.

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<sup>1</sup> This regulation recognizes that when a new office is first established and commences operations in the United States, the L-1A manager or executive responsible for setting up operations will be engaged in a variety of non-qualifying, day-to-day duties not normally performed by employees at the executive or managerial level and that often the full range of executive or managerial responsibility cannot be performed in that first year. *See* 52 Fed. Reg. 5738, 5740 (Feb. 26, 1987).

<sup>2</sup> The two definitions of "incidental" in *Webster's New College Dictionary* 573 (Third Edition, Hough Mifflin Harcourt 2008) are "1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature. . . ."

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.

In his October 14, 2011 letter, the petitioner's CAO quoted from the O\*Net OnLine Summary Report for Agents and Business Managers of Artists, Performers, and Athletes to support the proposition that such positions require bachelor's degrees. However, the summary report assigns Agents and Business Managers of Artists, Performers, and Athletes a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree."<sup>3</sup> Further, even as to those Job Zone "Four" occupations that do require a four-year bachelor's degree, O\*NET does not indicate that the requisite bachelor's degrees must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O\*NET information is not probative of the proffered position's being a specialty occupation.

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>4</sup> The AAO reviewed the information in the *Handbook* regarding the occupational category "Agents and Business Managers of Artists, Performers, and Athletes" and notes that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

**Data for Occupations Not Covered in Detail**

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O\*NET) code, the occupational definition, 2010 employment, the May 2010 median annual wage, the projected employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes

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<sup>3</sup> For an explanation of Job Zones, see <http://www.onetonline.org/help/online/zones>.

<sup>4</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.

categories such as "all other managers," for which little meaningful information could be developed.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited June 26, 2013).

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.<sup>5</sup> The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such cases, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one objective, authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether a particular position qualifies as a specialty occupation.

The AAO observes that the *Handbook* does not indicate that "Agents and Business Managers of Artists, Performers, and Athletes" positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The full-text of the *Handbook* regarding this occupational category is as follows:

**Agents and Business Managers of Artists, Performers, and Athletes**  
(O\*NET 13-1011.00)

Represent and promote artists, performers, and athletes in dealings with current or prospective employers. May handle contract negotiations and other business matters for clients.

- 2010 employment: **24,100**

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<sup>5</sup> The AAO notes that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections

- May 2010 median annual wage: **\$63,130**
- Projected employment change, 2010-20:
  - Number of new jobs: **3,400**
  - Growth rate: **14 percent (as fast as average)**
- Education and training:
  - Typical entry-level education: **Bachelor's degree**
  - Work experience in a related occupation: **1 to 5 years**
  - Typical on-the-job-training: **None**

*Id.*

The *Handbook* summary data provides "education and training categories" for occupations. The occupational category "Agents and Business Managers of Artists, Performers, and Athletes" falls into the group of occupations for which a bachelor's degree (no specific specialty) is the typical entry-level education. The AAO notes that, as evident in the above *Handbook* excerpt on this occupation, the *Handbook* reports only that a bachelor's degree is typical – but not required – for entry into "Agents and Business Managers of Artists, Performers, and Athletes" positions and, more importantly, the *Handbook* does not report that bachelor's degrees held by those entering the occupation are limited to and must be in any specific specialty directly related to the occupation. Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupational category.

Further, 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 the representation of actors, writers, directors, producers, designers, 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, 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

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specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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.

The petitioner did submit two 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. "Assistant to an MP Talent Agent" for [REDACTED] requiring a bachelor's degree and "Minimum of one year of related administrative 'work' experience – Industry related a must";
2. Agent trainees for [REDACTED] requiring a bachelor's degree and previous industry experience;

The AAO observes that although both of those vacancy announcements states a requirement of a bachelor's degree, neither of position appears to require a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Further, even if both of the vacancy announcements 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 two announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>6</sup>

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<sup>6</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 these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that 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 estimates of error").

The petitioner also submitted [REDACTED] profiles of six people. Each of those people appear to work in the petitioner's industry and appear to have a minimum of a bachelor's degree in a subject related to cinema or to creative writing. However, that six people in the petitioner's industry have bachelor's degrees in fields related to their jobs or to the industry is insufficient to credibly demonstrate that a requirement or a minimum of a bachelor's degree in a specific specialty or its equivalent is common throughout the petitioner's industry for parallel positions with companies similar to the petitioner. Further, that conclusion appears to conflict with the other evidence provided, as the two vacancy announcements submitted do not support the proposition that parallel positions in the petitioner's industry with organizations otherwise similar to the petitioner require a minimum of a bachelor's degree *in a specific specialty* or its equivalent. In any event, the AAO does not find resumes posted on [REDACTED], a social networking Internet site, to be a legitimate source of documentary evidence 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 parallel to the proffered position, and located in organizations that are similar to the petitioner.

The two letters from others in the petitioner's industry state that positions parallel to the proffered position "generally" require a bachelor's degree" in a "relevant and correlated area" such as English, communications, business, law, film or theater. Those assertions appear to conflict with the two vacancy announcements provided, which indicate that a bachelor's degree in any subject would be a sufficient educational qualification for some such positions. Further, even if the assertions in those letters are taken as evidence that such degrees are required, they are insufficient to satisfy the requirement of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as they assert that such positions require a degree within a wide array of subjects, rather than within a specific specialty.

Moreover, it is noted that one of the letters states a degree in "business" is one of the "generally require[d]" degrees in parallel positions. However, since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies

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As such, even if the job announcements supported the finding that the agents and business managers of artists, performers, and athletes for firms similar to and in the same industry as the petitioner 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 appear to have been consciously selected could credibly demonstrate that such an educational requirement is common throughout the petitioner's industry for parallel positions with companies similar to the petitioner.

for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

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 petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." 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.

The record lacks sufficiently detailed information to distinguish the proffered position as 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 it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO 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 bachelor's degree in a specific specialty, or its equivalent, for the proffered position.<sup>7</sup>

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<sup>7</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

As was noted above, the petitioner provided copies of two vacancy announcements it posted pertinent to its own positions. One is for a Talent Assistant, and the other is for a Broadcasting Assistant. They do not contain detailed descriptions of the duties of those positions, and the job titles suggest that they are not the same as the proffered position in the instant case. As such, no reason exists to suppose that the positions announced would have the same educational requirement as the proffered position. Further, although both announcements indicate that the positions they announce require a "4-Year Degree," neither contains any indication of a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent. For both reasons, they are not evidence that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty, or its equivalent, for the proffered position.

The petitioner also provided a spreadsheet listing the educational qualifications of five of its employees. That spreadsheet states that those people work for the petitioner as assistants in its "LA-Tv Lit" department. It further asserts, that, of those employees, [REDACTED] has a bachelor's degree in "English/Cinema," [REDACTED] has a bachelor's degree in "Theatre/Dance," [REDACTED] and [REDACTED] both have bachelor's degrees in "Communications," and [REDACTED] has a bachelor's degree in "Business/Cinematic Arts." The AAO observes that the array of degrees the petitioner accepts for such positions is not indicative of a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent and, in any event, the petitioner provided no evidence to corroborate that the petitioner employs those people in the positions claimed, that they have the degrees claimed, or that they are the only literary assistants the petitioner employs. For all of those reasons, that evidence is insufficient to show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

The evidence submitted is insufficient to demonstrate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the position, and the petitioner has not, therefore, satisfied the alternative criterion of 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 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, the duties of placing and screening calls, maintaining call logs and taking detailed messages and notes, setting and confirming meetings for agents and clients, keeping a log of incoming submissions, interacting with the accounting

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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").

department to assure client payments, processing new client paperwork, and preparing expense reports and travel requisitions clearly do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. "Taking on additional tasks and responsibilities as assigned" also cannot be demonstrated to require a minimum of a bachelor's degree in a specific specialty or its equivalent, absent a more concrete description of the duties that will be assigned.

Even the remainder of the duties of the proffered position, such as obtaining information about writing and directing assignments, reading and analyzing television scripts and suggesting improvements, classifying scripts, ordering scripts and/or video samples to be sent to producers/studios, maintaining databases, etc., contain no indication of a nature 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.

Moreover, it is noted that 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). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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