



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 05 2013** OFFICE: VERMONT SERVICE CENTER FILE:

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:

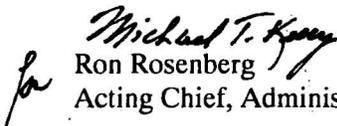
SELF-REPRESENTED

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 translation and realty service<sup>1</sup> established in 2000. In order to employ the beneficiary in what it designates as a pharmacology translator position,<sup>2</sup> 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 on the basis of his determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.<sup>3</sup>

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

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<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 541930, "Translation and Interpretation Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541930 Translation and Interpretation Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed Feb. 12, 2013).

<sup>2</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O\*NET/OES) Code 27-3091, the associated Occupational Classification of "Interpreters and Translators," and a Level II (qualified) prevailing wage rate.

<sup>3</sup> The record contains numerous references to the beneficiary's master's degree in pharmaceutical sciences (with a concentration in pharmacology) from St. John's University, her previous career as a physician in the People's Republic of China, and her eligibility to sit for a certification examination offered by the Academy of Clinical Research Professionals. However, as noted above the director denied the petition on the basis of the beneficiary's qualifications to perform the duties of the proffered position. He did not question the beneficiary's qualifications to perform its duties. As the beneficiary's qualifications to perform the duties of the proffered position are not at issue on appeal, the petitioner's arguments regarding the beneficiary's qualifications to perform its duties are irrelevant, and will not be addressed further.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term “specialty occupation” as one that requires:

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

The term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of*

*W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. 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 rely simply upon a proffered position’s title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In its September 8, 2011 letter of support, the petitioner stated that the duties of the proffered position would include the following tasks:

- Translating safety dossiers and documents about drug effects;
- Helping pharmaceutical companies get their products registered with international regulatory authorities by preparing a range of documents for regulatory submission;
- Maintaining all communication documents with customers; and
- Developing or updating trial tracking systems of her projects.

In what appears to be a printout of a PowerPoint presentation that the petitioner submitted in response to the director's RFE, the petitioner stated that the beneficiary would spend seventy percent of her time on technical translation; fifteen percent of her time on clinical trial management; and fifteen percent of her time on regulatory affairs. According to the petitioner, the beneficiary's technical translation duties would include the following:

- Translating information pertaining to the chemical composition, pharmacological action, toxicity, and therapeutic uses of herbal medicines;
- Translating articles pertaining to biomedical research, healthcare, food, and cosmetics;
- Translating information pertaining to Chinese hospitals' clinical experiences with herbs;
- Translating product registration documents;
- Translating policy statements, papers, and websites pertaining to pharmaceuticals, cosmetics, and health foods;
- Translating product inserts for cosmetic and food supplement products;
- Translating information pertaining to patents and packaging/label changes; and
- Consecutive and simultaneous interpretation at medical, cosmetic, and biomedical research conferences.

The beneficiary's clinical trial management duties would include the following:

- Coordinating clients for clinical trials in both China and the United States, including the selection and management of outside vendors;
- Overseeing the conduct of studies and "CRF" monitoring; and
- Developing or updating clinical trial tracking systems of products.

The beneficiary's duties pertaining to regulatory affairs would include the following:

- Preparing a range of documents for regulatory submission;
- Helping industries obtain registration and approval with international regulatory authorities; and
- Maintaining all communications documents with customers.

The petitioner stated that it was established in September 2000, and claimed that it engaged in various business activities, including realty services; translation and cooperative project services to pharmaceutical, cosmetic, and health food companies; and that it also introduces Chinese herbs into the U.S. medicinal market.

The AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>4</sup> The AAO agrees with counsel that the proposed duties align with those of interpreters and translators.

In relevant part, the *Handbook* states the following with regard to the duties of interpreters and translators:

Interpreters and translators convert information from one language to another. Interpreters work in spoken or sign language, translators in written language. . . .

Interpreters and translators typically do the following:

- Convert concepts in the source language to equivalent concepts in the target language
- Speak, read, and write fluently in at least two languages, including English and one or more others
- Relay style and tone
- Manage work schedules to meet deadlines
- Render spoken ideas accurately, quickly, and clearly

Interpreters and translators aid communication by converting information from one language into another. Although some people do both, interpreting and translating

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<sup>4</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oço/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

are different professions: interpreters deal with spoken words, translators with written words.

**Interpreters** convert information from one spoken language into another—or, in the case of sign language interpreters, between spoken language and sign language. Interpreters must usually be fluent speakers or signers of both languages because they communicate back and forth among the people who do not share each other's language.

There are two modes of interpreting: simultaneous and consecutive.

Simultaneous interpreting requires interpreters to listen or watch and speak or sign at the same time someone is speaking or signing. Simultaneous interpreting requires a high level of concentration. For that reason, simultaneous interpreters usually work in pairs, each interpreting for about 20 to 30 minutes and then resting while the other interprets. Simultaneous interpreters are often familiar with the subject matter so they can anticipate the end of a speaker's sentences.

In contrast, consecutive interpreting begins only after the speaker has said or signed a group of words or sentences. Consecutive interpreters often take notes while listening to or watching the speakers, so they must develop some type of notetaking or shorthand system.

**Translators** convert written materials from one language into another. The goal of a translator is to have people read the translation as if it were the original. To do that, the translator must be able to write sentences that flow as well as the original did while keeping the ideas and facts of the original accurate. Translators must consider any cultural references, including slang, and other expressions that do not translate literally.

Translators must read the original language fluently but may not need to speak it fluently. They usually translate only into their native language.

Nearly all translation work is done on a computer, and translators receive and submit most assignments electronically. Translations often go through several revisions before becoming final.

Interpreters' and translators' services are needed in a number of subject areas. Although these workers often do not specialize in any particular field or industry, many focus on one area of expertise.

The following are examples of occupational specialties:

**Health or medical interpreters and translators** typically work in healthcare settings and help patients communicate with doctors, nurses, and other medical staff. Both

interpreters and translators must have a strong grasp of medical terminology and the common words for those medical terms in both languages.

Health or medical interpreters must also have sensitivity to participate in patients' personal situations with healthcare providers.

Health or medical translators don't usually have the same level of personal interaction with patients and providers that interpreters do. They primarily convert information brochures, materials that patients must read and sign, and website information from one language to another.

\* \* \*

*Conference interpreters* work at conferences that have non-English-speaking attendees. The work is often in the field of international business or diplomacy, although conference interpreters can interpret for any organization that works with speakers of foreign languages. Employers prefer high-level interpreters who have the ability to translate from at least two languages into one native language—for example, the ability to interpret from Spanish and French into English. For some positions, such as those with the United Nations, this qualification is required.

Conference interpreters often do simultaneous interpreting. People at the conference who do not understand the language of the speaker wear earphones tuned to the interpreter who speaks the language they want to hear. The interpreter listens to a bit of the speaker's talk and then translates that bit. Simultaneous interpreters must be able to listen to the next bit the speaker is saying while translating the previous bit of what the speaker said.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Interpreters and Translators," <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-2> (accessed Feb. 12, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Although interpreters and translators typically need a bachelor's degree, the most important requirement is that they be fluent in English and at least one other language. Many complete job-specific training programs. . . .

The educational backgrounds of interpreters and translators vary, but it is essential that they be fluent in English and at least one other language. . . .

\* \* \*

Beyond high school, people interested in becoming an interpreter or translator have many educational options. Although a bachelor's degree is often required for jobs, majoring in a language is not always necessary. An educational background in a particular field of study can provide a natural area of subject-matter expertise.

However, interpreters and translators generally need specialized training on how to do the work. Formal programs in interpreting and translating are available at colleges and universities nationwide and through nonuniversity training programs, conferences, and courses.

Many people who work as conference interpreters or in more technical areas—such as localization, engineering, or finance—have a master's degree. Those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

*Id.* at <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-4>.

These findings from the *Handbook* do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupation. Although the *Handbook* does state that a bachelor's degree is typically required, it does not indicate that those translator positions which do require such training require that the degree be *in a specific specialty*.<sup>5</sup>

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Furthermore, it is noted that although the petitioner has emphasized the credentials of the beneficiary of this particular petition, it has never stated that a bachelor's degree, or the equivalent, in a specific specialty is required to perform the duties of the proffered position.<sup>6</sup>

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<sup>5</sup> The AAO acknowledges the *Handbook's* statement that "many" people who work "in more technical areas" of this occupational grouping possess a master's degree. However, that statement does not indicate that even a majority of such positions require such a credential, let alone that it is normally required. Moreover, it is not clear that the proffered position would even constitute one of those "more technical areas," given the *Handbook's* subsequent statement that medical interpreters or translators are more likely to have completed "job-specific training programs" rather than being subjected to a requirement of possessing, at minimum, a bachelor's degree, or the equivalent, in a specific specialty. The proffered position would appear more akin to a medical interpreter or translator than to a localization, engineering, or finance interpreter or translator, which were provided by DOL as representative of the types of "technical areas" to which it was referring.

<sup>6</sup> In other words, the petitioner does not establish that the beneficiary's credential – a master's degree in pharmaceutical sciences, with a concentration in pharmacology – is normally the minimum requirement for entry into the specific type of position that is proffered in this petition.

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not established 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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty 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. Nor has the petitioner submitted any other types of 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: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

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

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, the AAO finds, that the petitioner has not distinguished either the proposed duties, or the position that they comprise, from the various types of translation work described in the *Handbook*, which, DOL indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Although the petitioner's generalized description of the proposed job duties does appear to contain some tasks beyond those normally performed by interpreters and translators (including, for instance, the preparation of documents for regulatory submission; assisting companies in obtaining registration and approval by international regulatory authorities; and maintaining documents) the petitioner has failed to explain these duties with sufficient, probative, detail so as to persuasively convey that such duties would in fact require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.<sup>7</sup>

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

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<sup>7</sup> Furthermore, and at a more basic level, the petitioner has failed to establish that the beneficiary would in fact be required to execute these duties. The AAO notes that, in his February 17, 2012 RFE, the director requested copies of written contractual agreements or work orders from the companies that would utilize the beneficiary's services. The petitioner, however, neglected to do so. While such evidence is not generally required, in this case it would provide evidentiary support for the petitioner's claim that it provides translation services to pharmaceutical, cosmetic, and health food companies (and, therefore, that the beneficiary would actually provide such services while employed by the petitioner). It seems reasonable to assume that a company which claims to have provided these services since 2000 would be able to provide at least some evidence to support such a foundational assertion regarding its business activity. In this case, the petitioner has simply failed to establish the translator position for which this petition was filed would actually entail these additional duties. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<sup>8</sup> In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position of only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

It should be noted that a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so

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<sup>8</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In this case, the petitioner has not submitted information regarding any of its previous credit analysts. While a first-time hiring for a position is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited and hired for the position would not be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty.

As indicated above, the duties of the position are similar to those outlined in the *Handbook* as normally performed by translators, and the petitioner's description of those duties simply does not establish that they surpass or exceed the duties performed by typical interpreters and translators in terms of specialization and complexity. As discussed above, the *Handbook* indicates that interpreters and translators perform these duties routinely and, as discussed above, it does not indicate that interpreters and translators are normally required to possess a bachelor's degree, or the equivalent, in a specific specialty. The petitioner has simply failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Accordingly, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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.