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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 08 2013 OFFICE: CALIFORNIA 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,

Michael T. Kelly
for 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 "law firm/law practice" established in 1992. In order to employ the beneficiary in what it designates as a law clerk position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of her determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

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.

In its November 22, 2011 letter submitted in response to the director's RFE, the petitioner stated that the beneficiary would spend thirty percent of his time performing the following duties:

- Performing expert legal research and writing on extremely sophisticated issues in the fields of foreclosure defense, bankruptcy, commercial loan workouts, and unfair debt collection; and

- Summarizing and discussing updates in jurisprudence regarding bankruptcy matters.

The petitioner stated that the beneficiary would spend twenty percent of his time performing the following duties:

- Conducting high-level analysis of facts, evidence, and legal authorities in connection with the petitioner's clients' legal matters.

The petitioner stated that the beneficiary would spend forty-five percent of his time performing the following duties:

- Preparing persuasive legal memoranda, pleadings, motions, and briefs which synthesize facts, evidence, and legal authorities.

Finally, the petitioner stated that the beneficiary would spend five percent of his time performing the following duties:

- Assisting attorneys prepare for depositions and trials; and
- Preparing correspondence for the signature of attorneys on a variety of complex issues.

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.

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 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *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.

The letter from Associate Professor of Law at the does not establish that the proffered position is a specialty occupation or that it meets any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) enumerated above. In his October 25, 2011 letter briefly described the petitioner's law firm; stated his opinion that companies seeking to employ law clerks require individuals with a bachelor's degree in the field of legal studies, and that such a requirement "is considered an industry standard"; provided a verbatim repetition of the proposed duties as set forth by the petitioner in its September 14, 2011 letter of support; listed the types of coursework typically undertaken by students pursuing a bachelor's degree in legal studies; listed several types of jobs for which an individual with a bachelor's degree in legal studies would be qualified; and stated that the duties of the proffered position differ from those performed by paralegals and legal assistants because only law clerks are qualified to draft and proofread judicial opinions, decisions, or citations, research laws, court decisions, documents, opinions, and/or briefs, and review dockets of pending litigation to ensure adequate progress.

However, the AAO finds that neither academic status, as described by him, nor his resume, nor his writings, establish him as one with expert knowledge, or as one who has been accepted as a recognized authority, in the area in which he opines, namely, the academic requirements for performing the duties of a particular position within this occupational classification, let alone one in such a position in a relatively small law firm. Further, his submission is superficial and conclusory, for it does not specify and discuss any studies, surveys, or other authoritative publications, and, significantly, it does not discuss the pertinent occupational information provided in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). As indicated, failed to list whatever studies, surveys, or other reference materials he relied upon as a basis for his statements. Nor did he indicate whether he visited the petitioner's business premises or spoke with anyone affiliated with the petitioner, so as to ascertain, and base his opinion upon, the substantive nature, and the substantive educational requirements, of the proposed duties and the proffered position as they would be actually performed. It appears that did not base his opinion on any objective evidence, but instead simply restated the duties of the proffered position as provided by the petitioner. Having made these foundational observations regarding the limited evidentiary value his letter, the AAO will now specifically address several problematic statements made by

The AAO notes first that, in his attempt to differentiate the duties of the proffered position from those of paralegals and legal assistants, stated that only law clerks are qualified to draft and proofread judicial opinions and decisions. However, the drafting and proofreading of judicial opinions and decisions are not components of the position proffered in this petition, and reliance on such extraneous duties further undermines the probative value of his letter. also attempted to differentiate the duties of the proffered position from those of paralegals and legal assistants by asserting that only law clerks are qualified to research laws, court decisions, documents, and opinions. However, as will be discussed below, in its aforementioned *Handbook* DOL listed precisely those duties as among those typically performed by paralegals and legal assistants. did not explain the basis of his apparent disagreement with the findings made by DOL and published in its *Handbook*.

Nor did offer any support for his assertions that "it is not uncommon for law firms of similar size and income of $1.4 million to require Law Clerks with Bachelor level educations" and that "the degree is considered an industry standard requirement for the position." 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)).

Nor did explain the source of his knowledge regarding the petitioner's business practices, specifically, the basis for his opinion that the petitioner "provides a proven, hands-on approach of dedicated and personalized representation." Again, absent evidence that visited the petitioner's business premises, spoke with anyone affiliated with the petitioner, or conducted any research into the petitioner's business model or business operations beyond reading the petitioner's September 14, 2011 letter of support or other similar, basic, information about the petitioner, it is not clear to the AAO how was able to reach these conclusions.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

For all of these reasons, the AAO finds that October 25, 2011 letter is not probative evidence that the petitioner has satisfied any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor do the petitioner's citations to two unpublished AAO decisions and a decision granting summary judgment issued by the U.S. District Court for the Southern District of Texas establish that the proffered position is a specialty occupation or that it meets any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) enumerated above. With regard to the unpublished AAO decisions, it is noted that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. With regard to the summary judgment opinion issued by the U.S. District Court for the Southern District of Texas, the AAO notes that in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. As this case did not arise within the jurisdiction of the U.S. District Court for the Southern District of Texas, that court's decisions have even less persuasive value.

For all of these reasons, the AAO finds that the two unpublished AAO decisions and the summary judgment opinion issued by the U.S. District Court for the Southern District of Texas are not evidence that the petitioner has satisfied any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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)(*1*), 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 aforementioned *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.[1] Although the petitioner argues that the duties of the proffered position are not analogous to those of paralegals and legal assistants, the AAO disagrees. Instead, the AAO concurs with the director, and finds that the duties of the proffered position generally align with those of paralegals and legal assistants as those duties are described in the *Handbook*. The *Handbook* describes the duties and responsibilities of paralegals and legal assistants as follows:

> Paralegals and legal assistants do a variety of tasks to support lawyers, including maintaining and organizing files, conducting legal research, and drafting documents. . . .
>
> Paralegals and legal assistants typically do the following:
>
> - Investigate the facts of a case
> - Conduct research on relevant laws, regulations, and legal articles
> - Organize and present the information
> - Keep information related to cases or transactions in computer databases
> - Write reports to help lawyers prepare for trials
> - Draft correspondence and other documents, such as contracts and mortgages
> - Get affidavits and other formal statements that may be used as evidence in court
> - Help lawyers during trials
>
> Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. However, their specific duties may vary depending on the size of the firm or organization.

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

> In smaller firms, paralegals duties tend to vary more. In addition to reviewing and organizing information, paralegals may prepare written reports that help lawyers determine how to handle their cases. If lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments and draft documents to be filed with the court.
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> In larger organizations, paralegals work mostly on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal might only review legal material for internal use, maintain reference files, conduct research for lawyers, and collect and organize evidence for hearings. Litigation paralegals often do not attend trials, but might prepare trial documents or draft settlement agreements.
>
> Law firms increasingly use technology and computer software for managing documents and preparing for trials. Paralegals use computer software to draft and index documents and prepare presentations. In addition, paralegals must be familiar with electronic database management and be up to date on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites.
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> Paralegals can assume more responsibilities by specializing in areas such as litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, bankruptcy, immigration, family law, and real estate. In addition, experienced paralegals may assume supervisory responsibilities, such as overseeing team projects or delegating work to other paralegals.
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> Paralegal tasks may differ depending on the type of department or the size of the law firm they work for.

See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Paralegals and Legal Assistants," http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-2 (last accessed Jan. 25, 2013).

The DOL's O*Net OnLine Summary Report[2] for the occupational category "Paralegals and Legal Assistants" provides the following description of the duties normally performed by such individuals:

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[2] In general, O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as its JobZone designations make no mention of the specific field of study from which a degree must come. First, as was noted previously, the AAO 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 proposed position. Second, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to

Assist lawyers by investigating facts, preparing legal documents, or researching legal precedent. Conduct research to support a legal proceeding, to formulate a defense, or to initiate legal action. . . .

- Prepare affidavits or other documents, such as legal correspondence, and organize and maintain documents in paper or electronic filing system.
- Prepare for trial by performing tasks such as organizing exhibits.
- Prepare legal documents, including briefs, pleadings, appeals, wills, contracts, and real estate closing statements.
- Meet with clients and other professionals to discuss details of case.
- File pleadings with court clerk.
- Gather and analyze research data, such as statutes, decisions, and legal articles, codes, and documents.
- Call upon witnesses to testify at hearing.
- Investigate facts and law of cases and search pertinent sources, such as public records, to determine causes of action and to prepare cases.
- Direct and coordinate law office activity, including delivery of subpoenas.
- Keep and monitor legal volumes to ensure that law library is up-to-date.

See Employment & Training Administration, U.S. Department of Labor, O*Net OnLine, Summary Report for Paralegals and Legal Assistants, available at http://www.onetonline.org/link/summary/23-2011.00 (accessed Jan. 26, 2013).

Furthermore, the AAO finds it noteworthy that DOL provides a list of several alternate "reported job titles" for this occupational category. That list includes the title "law clerk." *See id.*

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be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For both of these reasons, the information from O*NET OnLine is normally of little evidentiary value to the issue of whether a proffered position qualifies for classification as a specialty occupation.

However, the AAO is not citing to O*Net OnLine for this purpose. The AAO cites O*Net OnLine at this portion in its discussion merely as further evidence that the duties proposed for the beneficiary fall within those considered by DOL as being normally performed by paralegals and legal assistants.

The similarities of the duties of the proffered position to those of paralegals and legal assistants as described by DOL in the *Handbook* and O*Net OnLine are manifold. For example, the petitioner claims that the beneficiary would conduct legal research and writing; analyze facts, evidence, and legal authorities; prepare legal memoranda, pleadings, motions, and briefs; assist attorneys as they prepare for depositions and trials; and prepare attorneys' correspondence. As noted above, the *Handbook* specifically states that paralegals and legal assistants conduct legal research; draft documents to be filed with the court; investigate the facts of cases; write reports to help lawyers prepare for trials; and draft correspondence.[3] In similar fashion, O*Net OnLine states that paralegals and legal assistants preparing legal documents; research legal precedent; conduct research to support a legal proceeding; prepare legal correspondence; prepare for trial; prepare legal documents, including briefs, pleadings, appeals, wills, contracts, and real estate closing statements; and gather and analyze research data, such as statutes, decisions, and legal articles, codes, and documents.[4] The duties of the proffered position are very similar, if not identical, to those of paralegals and legal assistants as described by DOL in the *Handbook* and in O*Net OnLine, and consequently the petitioner's claims that the duties of the proffered position are dissimilar to those of paralegals and legal assistant are not persuasive.[5]

Having determined that the duties of the proffered position align with those of paralegals and legal assistants, the AAO turns next to the *Handbook's* discussion of the normal entry requirements for this occupational classification. The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

> Most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. In some cases, employers may hire college graduates with a bachelor's degree but no legal experience or education and train them on the job.

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[3] *See Handbook* at http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-2.

[4] *See* O*Net OnLine at http://www.onetonline.org/link/summary/23-2011.00.

[5] The petitioner's submission of the O*Net OnLine Summary Report for the occupational category of "Law Clerks," SOC (O*NET/OES) Code 23-2092.00, does not aid its case in this regard, as O*Net OnLine no longer separates Law Clerks into a separate category. This former occupational category has been replaced by "Judicial Law Clerks," SOC (O*NET/OES) Code 23-1012.00 and "Paralegals and Legal Assistants," SOC (O*NET/OES) Code 23-2011.00. The duties of the proffered position do not fall within those described for the Judicial Law Clerk occupational category, but as observed above do fall within those described for paralegals and legal assistants.

Moreover, even if this were not the case, the AAO notes nonetheless that the former O*Net OnLine Summary Report for the occupational category of "Law Clerks," SOC (O*NET/OES) Code 23-2092.00 submitted by the petitioner, which, again, is no longer in use, states that fully twenty-four percent of law clerk positions require only a high school diploma, or the equivalent. Further, of the positions which do require a bachelor's degree, the Summary Report does not state that the bachelor's degree must come from a specific specialty.

Handbook at http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-4.

These findings do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupation. 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 the paralegals and legal assistants 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."

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. The AAO discussed the deficiencies in letter above,[6] and the record of proceeding contains no other evidence of eligibility under the first prong of this criterion.

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

[6] Again, while claimed an industry-wide requirement for at least a bachelor's degree or the equivalent, the record is devoid of any documentary evidence supporting his assertion. Again, 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* at 165.

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 would 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 duties which collectively constitute the position are similar to those outlined in the *Handbook* as normally performed by paralegals and legal assistants, and the petitioner's description of them simply does not establish that they surpass or exceed the duties performed by typical paralegals and legal assistants in terms of complexity or uniqueness. For example, although the petitioner stated in its November 22, 2011 letter that a *Juris Doctor* degree is required to research legal authorities, check the currency of case law, draft pleadings, and prepare briefs and arguments, both the *Handbook* and O*Net OnLine indicate that paralegals and legal assistants perform these duties routinely and, as discussed above, neither of these resources indicates that paralegals and legal assistants are normally required to possess a bachelor's degree, or the equivalent (let alone a *Juris Doctor*), in a specific specialty.

The AAO finds further that, even outside the context of these two resources published by DOL, the petitioner has simply not established relative complexity or uniqueness as attributes of the proffered position, let alone as attributes with such elevated responsibilities as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique it can be performed only by an individual with at least 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. 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 with regard to 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. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 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* section 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 actual performance requirements of the position necessitate a petitioner's history of requiring a particular degree in its recruiting and hiring for the position. *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 long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record does not indicate whether the petitioner has ever employed anyone in a position similar to the one proffered here. Although the fact that a proffered position is a newly-created one 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 cannot 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 a specific specialty.

Again, the duties of the position are similar to those outlined in the *Handbook* as normally performed by paralegals and legal assistants, and the petitioner's description of those duties simply does not establish that they surpass or exceed the duties performed by typical paralegals and legal assistants in terms of specialization and complexity. As discussed above, although the petitioner stated that a *Juris Doctor* degree is required to research legal authorities; check the currency of case law; draft pleadings; and prepare briefs and arguments; both the *Handbook* and O*Net OnLine indicate that paralegals and legal assistants perform these duties routinely and, as discussed above, neither of these resources indicates that paralegals and legal assistants 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.

For all of these reasons, 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 evidence in the record of proceeding does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be concluded that the petitioner has established the proffered position as 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.