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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

[Redacted]

DATE: **MAY 31 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:

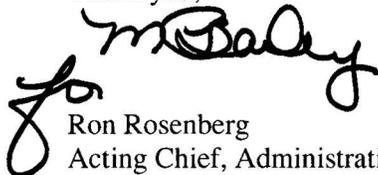
[Redacted]

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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on April 2, 2012. In the Form I-129 visa petition, the petitioner describes itself as a Montessori school established in 2007. In order to employ the beneficiary in what it designates as a Montessori teacher 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 on November 10, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

In this matter, the petitioner stated in the Form I-129 petition that it seeks the beneficiary's services as a Montessori teacher to work on a part-time basis at a rate of pay of \$20.00 per hour. With the Form I-129 petition, the petitioner submitted a letter dated March 28, 2012. In the letter, the petitioner stated that it "enrolls children ages three through six." In addition, the letter included a description of the duties of the proffered position. Specifically, the petitioner stated that the beneficiary would perform the following duties:

In this position, [the beneficiary] will be responsible for providing classroom instruction, preparing lesson plans, and adapting and administering age-appropriate curriculum using Montessori learning principles. She will prepare course objectives and outlines for the course of study that adhere to curriculum guidelines of both the school and the State of Washington. More specifically, [the beneficiary] will establish and apply models of Montessori educational development to the instruction of students, adapting the curriculum to each child's specific needs. In the Montessori program, our teachers lead core curriculum courses, which include language, reading, math, geography, history, botany, zoology, earth science, practical life, art, and sensorial.

[The beneficiary] will lecture, demonstrate and utilize various audiovisual devices and teaching aides to present subject matter to small classes. She will ensure that the

students comprehend course material before subsequent material is introduced. Additionally, she will prepare, administer and correct works. [The beneficiary] will be expected to teach and enforce rules of conduct and maintain order in the classroom in an effort to facilitate an atmosphere conducive to learning. Further, she will keep the students' parents apprised of progress, as well as of the students' academic and behavioral attitudes and achievements.

In the letter of support, the petitioner stated that the position requires "a bachelor's degree or the equivalent and Montessori Teacher/Directress of Children certification." Further, the petitioner indicated that the bachelor's degree "need not be in education," but "specialized knowledge in the field of education is fulfilled by the completion of an established post-baccalaureate teacher training program, which for [the] Montessori school is a Montessori teacher training program."

The petitioner submitted an academic evaluation, which indicates that the beneficiary obtained a U.S. equivalent of a Bachelor of Arts degree in Industrial Design (Product Design) from [REDACTED]. The petitioner also submitted a diploma and transcript issued by the foreign institution. In addition, the petitioner provided certificates issued to the beneficiary from the Montessori Institute of America and the Montessori Teacher Preparation of Washington.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Kindergarten Teachers, Except Special Education" – SOC (ONET/OES Code) 25-2012 for a Level I (entry) position.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 30, 2012. The director specifically requested the petitioner submit sufficient documentary evidence to show that the petitioner has "enrolled students at the kindergarten level whom the beneficiary will teach." Further, the director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook')* section on "Kindergarten Teachers." The director noted the *Handbook* states that while all states require public kindergarten and elementary school teachers to have at least a bachelor's degree in elementary education," and that "teachers in private schools do not need to meet state requirements." The director noted that "the requirements appear to vary by private school as to what course of study might be appropriate or preferred." The director requested additional evidence to establish that the proffered position qualifies as a specialty occupation and outlined the specific evidence to be submitted.

On August 16, 2012, counsel for the petitioner responded to the RFE by submitting a brief and additional evidence. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on November 10, 2012. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition. In support of its Form I-290B, counsel submitted a brief and additional evidence.

The AAO reviewed the record of proceeding in its entirety, and finds that the petitioner has not provided sufficient evidence to establish eligibility for the benefit sought under the applicable statutory and regulatory provisions. Accordingly, the petition cannot be approved and the appeal must be dismissed.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

The petitioner reported that it is a Montessori school and that its staff consists of three employees. The petitioner stated that its gross annual income is \$68,000. Although requested in the Form I-129 petition, the petitioner did not provide its net income. The petitioner did not state a reason for failing to provide the requested information. Moreover, the petitioner did not submit supplemental documentary evidence on the issue.

As previously noted, the director specifically requested the petitioner submit sufficient documentary evidence to show that it has "enrolled students at the kindergarten level whom the beneficiary will teach." In a letter dated August 3, 2012, the petitioner stated that "[the beneficiary] will be teaching in a mixed-age group classroom for children in the three to six year age group." The petitioner continued by stating that "[t]hese age groups correspond to pre-kindergarten, kindergarten, and sometimes first-grade students in a non-Montessori environment." The petitioner stated that "pre-kindergarten students are included in this classroom. . . . [and] that pre-kindergarten children in a Montessori program begin to learn . . . to a greater degree than in other pre-kindergarten programs."

In the denial, the director noted that "a search of public record indicates that the address at [REDACTED] belongs to a single family house" and that "it is unclear that the petitioner is authorized to conduct its business at this address."

On appeal, the petitioner provided the following statement regarding its business operations:

We currently have three classes and a total of 39 students enrolled in the school. We have a morning class for students ages 3 to 6, which runs from 9 a.m. to noon and has 30 students. We have an afternoon class for students ages 3 to 6, which runs from 12:30 p.m. to 3:30 p.m. and has 12 students, including kindergarten age students who are also in the morning class and who stay for the full school day. We also have a class for first-grade students ages 6 to 7, running from 9 a.m. to 3:30 p.m., which enrolls three students. In addition, after the Christmas holiday, we will be breaking into four classes, with a fourth class for students ages 3 to 6, running from 9:00 a.m. to noon. Our school building is approximately 2000 square feet, with an outbuilding that is approximately 500 square feet.

[The petitioner] is approved by the Washington Office of the Superintendent of Public Instruction (OSPI) to offer elementary education. We are also licensed by [redacted] Teacher Preparation of Washington as an internship school, which means that [redacted] teachers in training are able to complete their internships with us. We are not a daycare facility and do not offer daycare. Therefore, we do not have a daycare license.

The petitioner submitted the following documents regarding its operational activities:

- A copy of a certificate of private school approval from Washington State Board of Education.
- A copy of certificate issued by the [redacted] stating that the petitioner has fulfilled the requirements as an internship school for ages 2 ½ to 6 years.
- Copies of photographs of children engaged in various activities.
- Printouts from the petitioner's website entitled "Welcome," "The [redacted] Method," "Admissions," "Calendar," and "Contact Us."

Upon review of the record, the AAO finds that the petitioner has provided insufficient probative documentation to substantiate its claims regarding its operational activities and the actual work that the beneficiary will perform to establish eligibility for this benefit. That is, there is a lack of substantive, documentary evidence that the petitioner is a viable entity (e.g., an enterprise engaged in regular, systematic and continuous operations which produces services or goods) that it is able to substantiate its claim that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.<sup>1</sup>

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<sup>1</sup> The regulation at 8 C.F.R. § 214.2(h)(11)(ii) addresses the grounds for automatic revocation of the approval of a petition and state, in pertinent part, that the "approval of any petition is immediately and automatically revoked if the petitioner goes out of business." It logically flows that a petitioner must be in business for the director to grant the petition. If the petitioner were not in business and the director granted the petition, it

While the petitioner claims that it currently enrolls 39 students, the petitioner did not submit any documentary evidence to substantiate its claim. The record contains photographs of children engaged in various activities, but the petitioner failed to submit probative evidence to support its statements with regard to its business operations. Further, as mentioned, the petitioner's address appears to be a residential home and the petitioner did not submit evidence to establish that it is legally permitted to occupy and use the residential home to conduct educational activities on its premises and employ individuals at these sites per local zoning laws and regulations. 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)).

For the beneficiary's H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.<sup>2</sup> 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). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1).

A position may be awarded H-1B classification only on the basis of evidence of record establishing that, at the time of the filing, definite, non-speculative work would exist for the beneficiary for the period of employment specified in the Form I-129. The record of proceeding does not contain such evidence. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes

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would result in the absurd result of the approved petition immediately and automatically being revoked. See 8 C.F.R. § 214.2(h)(11)(ii). As such, it is reasonable to request evidence from the petitioner to establish that it is a bona fide business prior to the adjudication of the H-1B petition.

<sup>2</sup> The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or 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. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Moreover, the AAO finds that, as reflected in the description of the position as quoted above, the petitioner describes the proposed duties in terms of generalized and generic functions that fail to convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "lecture, demonstrate and utilize various audiovisual devices and teaching aides to present subject matter to small classes" and that she "will be expected to teach and enforce rules of conduct and maintain order in the classroom in an effort to facilitate an atmosphere conducive to learning." However, notably, the statements provide no insight into the beneficiary's actual duties, nor do they include sufficient information regarding the specific tasks that the beneficiary will perform. Thus, as so generally described, the description does not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. Upon review of the job description, the AAO notes that the overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations. Furthermore, the petitioner did not provide sufficient documentation to substantiate the job duties and responsibilities of the proffered position.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. The AAO also observes, therefore, that it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described by the petitioner, the AAO finds, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position.

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not credibly supported by the job description or substantive evidence.

On appeal, counsel states that the issue that the petitioner failed to extend a credible and valid job offer was not mentioned in the RFE and that it is "highly inappropriate to deny the petition for this reason." However, the AAO notes that the director specifically asked the petitioner to provide additional documentary evidence to show that it has enrolled students at the kindergarten level. Although requested, the petitioner failed to provide sufficient probative evidence on this issue.

Moreover, as to the perceived error in the director's failure to issue an RFE covering all of the possible bases for denial of the petition, the AAO notes that there is no requirement for USCIS to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. Title 8 C.F.R. § 103.2(b)(8) clearly permits the director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the director. Counsel's assertion is tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. The attempt to shift the evidentiary burden in this proceeding is without merit. The burden to establish eligibility in this matter remains solely with the petitioner. Section 291 of the Act. When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). It must be noted that the regulations governing RFEs clearly indicate that the issuance of an RFE is purely discretionary and that the director may instead deny an application when eligibility has not been established. *See* 8 C.F.R. § 103.2(b)(8).

Furthermore, even if the director had erred as a procedural matter in not issuing an RFE or Notice of Intent to Deny relative to the petitioner's failure to extend a credible and valid job offer, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner had an opportunity to supplement the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner yet another additional opportunity to supplement the record with new evidence. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Moreover, 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 applicable 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, a proposed 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 make its determination whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a [REDACTED] teacher position. However, 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 AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> As discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Kindergarten Teachers, Except Special Education."

The AAO reviewed the chapter of the *Handbook* entitled "Kindergarten and Elementary School Teachers," including the sections regarding the typical duties and requirements for this occupational

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<sup>3</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

category.<sup>4</sup> The subchapter of the *Handbook* entitled "How to Become a Kindergarten and Elementary School Teacher" states, in pertinent part, the following about this occupation:

**Education**

All states require public kindergarten and elementary school teachers to have at least a bachelor's degree in elementary education. Some states also require kindergarten and elementary school teachers to major in a content area, such as math or science. Those who major in a content area typically enroll in their university's teacher preparation program and also take classes in education and child psychology.

In teacher education programs, future teachers learn how to present information to young students and how to work with young students of varying abilities and backgrounds. Programs typically include fieldwork, such as student teaching.

Some states require kindergarten and elementary school teachers to earn a master's degree after receiving their teaching certification.

Teachers in private schools do not need to meet state requirements. However, private schools typically seek kindergarten and elementary school teachers who have a bachelor's degree in elementary education.

**Licenses and Certification**

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification. Those who teach in private schools are generally not required to be licensed.

Kindergarten and elementary school teachers are typically certified to teach early childhood grades, which are usually preschool through third grade, or elementary school grades, which are usually first through sixth grades or first through eighth grades.

Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, typically gained through student teaching. Some states require a minimum grade point average. States often require candidates to pass a general teaching certification test, as well as a test that demonstrates their knowledge of the subject they will teach. Although kindergarten and elementary school teachers typically do not teach only a single subject, they may still be required to pass a content area test to earn their certification.

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<sup>4</sup> For additional information on the occupational category "Kindergarten and Elementary School Teachers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Kindergarten and Elementary School Teachers, on the Internet at <http://www.bls.gov/ooh/Education-Training-and-Library/Kindergarten-and-elementary-school-teachers.htm#tab-4> (last visited May 29, 2013).

Teachers are frequently required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification.

Some alternative certification programs allow candidates to begin teaching immediately after graduation, under the supervision of an experienced teacher. These programs cover teaching methods and child development. After they complete the program, candidates are awarded full certification.

Other programs require students to take classes in education before they can teach. Students may be awarded a master's degree after completing either of these programs. For information about alternative certification programs, contact the National Center for Alternative Certification.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Kindergarten and Elementary School Teachers, on the Internet at <http://www.bls.gov/ooh/Education-Training-and-Library/Kindergarten-and-elementary-school-teachers.htm#tab-4> (last visited May 29, 2013).

As previously mentioned, while the *Handbook* indicates that all states require public kindergarten and elementary school teachers to have at least a bachelor's degree in elementary education, teachers in private schools do not need to meet state requirements. The *Handbook* also states that private schools typically seek kindergarten and elementary school teachers who have a bachelor's degree in elementary education. However, while private schools may typically seek kindergarten teachers with a bachelor's degree in elementary education, a bachelor's degree in specific specialty is not required for entry in such positions.

In the support letter dated March 29, 2012 the petitioner stated that the "undergraduate degree need not be in education" and further claimed that "specialized knowledge in the field of education is fulfilled by the completion of an established post-baccalaureate teaching training program, which for our Montessori school is a Montessori teacher training program." As previously noted, the petitioner stated that the proffered position requires "a bachelor's degree or the equivalent and Montessori Teacher/Directress of Children certification."

The AAO observes that counsel for the petitioner emphasizes in response to the RFE that for "individuals qualify as kindergarten teachers either through completion of a bachelor's degree in a field other than education, followed by completion of a post-baccalaureate teacher preparation program or through completion of a bachelor's degree specifically in education." Counsel submitted several documents to establish that to become a teacher "standard preparation is a bachelor's degree in a field other than education, combined with completion of a post-graduate teacher preparation program." The following documents apply to the State of Washington where the proffered position

is located:

- Section on "Frequently Asked Questions" from State of Washington Office of Superintendent of Public Instruction, which states that Washington requires a minimum of a bachelor's degree and a state approved teacher preparation program.
- A printout from Professional Educator Standards Board PATHWAYS of Washington. Under the section "I want to become a teacher, what do I have to do?", it states, in part, that "in order to receive a teaching certificate you must also hold a Bachelor's Degree or higher from a regionally accredited college/university and have completed the requirements of an approved teaching certificate from an approved teaching program in Washington or a state that has reciprocity with Washington."
- A printout from Antioch University Seattle on Graduate Teacher Preparation. It states that "if you already have your bachelor's or advanced degree and want to teach elementary education (k-8), this program is for you."

In response to the RFE, counsel refers to an unpublished AAO decision to state that "the AAO caselaw supports BOTH that the standard educational background of teachers in the United States is a bachelor's degree plus a teacher preparation program" and enclosed a copy of the decision. However, the AAO notes that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Further, 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.

Moreover, the AAO finds that, contrary to post-baccalaureate programs for teacher certification that require a bachelor's degree prior to entering the program, the evidence of record indicates that a bachelor's degree is *not* required for a [REDACTED] certificate. As previously noted, the beneficiary received a certificate as a Directress of Children, Ages 2 ½ to 6 years, from [REDACTED] America ([REDACTED]). The record also contains a Teaching Certificate stating that the beneficiary completed the Teacher's course in the study and practice of the [REDACTED] Education, and a Certificate of Attendance stating that the beneficiary completed 200 hours in the study of [REDACTED] Method of Preschool Education from the [REDACTED] Teacher Preparation (MTP) of Washington. MTP of Washington is affiliated with the [REDACTED]. The AAO reviewed a brochure on MTP of Washington on its website and under section entitled "[REDACTED]: A Career in Education," it states the following:

[REDACTED] prepares graduates to teach in [REDACTED] and in other countries. The program consists of the academic course work (Phase I) and a ten-month teacher internship (Phase II).

Classes are held in [REDACTED] WA, just fifteen minutes southeast of SeaTac International Airport, and in [REDACTED] WA.

Candidates must have at least two years of college education, or two years' experience working daily with young children in a classroom, or a combination of the two.

Upon successful completion of Phases I and II, students may apply for and will receive a teaching certificate for the level 21/2-6 from the [REDACTED] America. Students may have up to three years to complete the course.

[REDACTED] Brochure," available on the Internet at [REDACTED] Broc [REDACTED]

As stated in its brochure, the beneficiary received [REDACTED] teaching certificate from [REDACTED] where a bachelor's degree is not a requirement for entry into its program, but "at least two years of college education, or two years' experience working daily with young children in classroom, or a combination of the two."

Similarly, the AAO notes that a bachelor's degree is not a requirement for other programs for [REDACTED] teaching certification. Counsel provided a printout from the section of American Society's website entitled "Become an AMS [REDACTED] Teacher or Administrator" and which states in part, the following:

### Credentials

AMS awards credentials to teach children in any of the following age levels: birth through 3, 2.5 – 6, 6 – 12, and 12 – 18. AMS also awards an administrator credential.

To be eligible to earn a full Montessori credential at an AMS-affiliated teacher education program, you must hold a BA or BS degree (or higher). **If you have completed high school but do not hold a college degree, you are eligible to earn an associate credential at the Infant & Toddler and Early Childhood levels.**

You can read more about this in the [AMS Teacher Education Programs](#) page of this Web site.

(Emphasis added.) The AAO reviewed the portion of the website entitled "AMS Teacher Education Programs," which states in pertinent part:

### [REDACTED] Credentials

AMS issues [REDACTED] credentials to successful graduates of AMS-affiliated TEPs who hold a BA or BS degree (or higher). **An associate credential for Infant & Toddler and Early Childhood levels is awarded to those who have completed high school but do not hold a college degree.**

The following credentials are awarded after graduation from an AMS TEP:

- Infant & Toddler (birth – age 3)
- Early Childhood (ages 2 1/2 – 6)
- Elementary I (ages 6 – 9)
- Elementary II (ages 9 – 12)
- Elementary I – II (ages 6 – 12)
- Secondary I (ages 12 – 15)
- Secondary I – II (ages 12 – 18)
- Administrator

(Emphasis added.) American [redacted] Society, "AMS Teacher Education Programs," available on the Internet at [redacted] (Teacher/200Resources/Link.aspx?id=0CB4C5FCC93D41869F5B77D87 [redacted])

Counsel also submitted a letter dated August 3, 2012 from [redacted] who claimed that "a majority of [redacted] training programs currently require that the candidate for [redacted] training holds a Bachelor's Degree." [redacted] listed the American [redacted] Society and Association M [redacted] International as such organizations and claimed that those "two large [redacted] training organizations, recognized by [The I [redacted] both require teacher candidates to hold a Bachelor's Degree prior to beginning [redacted] training." However, [redacted] did not submit documentary evidence to substantiate her claim. Instead [redacted] included a document entitled "[redacted] Kindergarten Curriculum by [redacted]" which provides general information regarding the kindergarten curriculum, but does not establish that a bachelor's degree is required for [redacted] certification. Further, as noted above, the evidence from AMS contradicts [redacted] statements, since an associate credential for Infant, Toddler and Early Childhood levels at AMS does not require a bachelor's degree. Moreover, [redacted] later states in the letter that the "'best practice' for [redacted] schools is to require teachers of children, ages 3 to 6 years, to hold Bachelor's Degrees because the [redacted] 'mixed age' model includes the kindergarten (5-year-old) child, and is in fact through age 6," suggesting that a bachelor's degree is not required, but it is a preference ("best practice"). The AAO finds that [redacted] letter contains inconsistent statements and is not substantiated by documentary evidence; thus, it is not probative evidence. Based upon a complete review of the record of proceeding, the petitioner and counsel have not established that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a

<sup>5</sup> [redacted] describes the [redacted] as "an organization recognized by the U.S. Department of Education" and [redacted] training programs that meet [sic] their [sic] essential standards."

specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, including the [REDACTED] or [REDACTED], reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Further, as previously noted, the letter from [REDACTED] is not probative evidence. Thus, the AAO incorporates by reference the previous discussion on the matter.

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or the equivalent, is common in the petitioner's industry for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it

can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

The AAO acknowledges that counsel asserts that the proffered position qualifies as a specialty occupation under this criterion of the regulations. In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents including printouts from the American Montessori Society website and several articles regarding the Montessori Method of education. Upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. That is, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. The petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or 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 in a specific specialty, or its equivalent.

The AAO again observes that the N [redacted] issues a certificate to individuals who have at least two years of college education or equivalent experience and also American [redacted] issues associate credentials in Early Childhood Education to individuals who have no more than a high school diploma. See American [redacted] Society, "AMS Teacher Education Programs," available on the Internet at [redacted] BF35F6&\_z=z (last visited May 29, 2013). Thus, neither the [redacted] nor [redacted] indicate that the position of [redacted] teacher is so complex or unique that it can only be performed by an individual with at least a baccalaureate in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry level) wage. This wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>6</sup>

The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree

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<sup>6</sup> For additional information regarding wage levels as defined by DOL, see Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

in a specific specialty, or its equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not credibly demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or its equivalent.

Furthermore, the petitioner has failed to demonstrate how the duties of the [REDACTED] teacher as described in the position description 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. While 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 AAO observes that the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience as a teacher will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, 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 performance requirements of the 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 in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner states in the Form I-129 petition that it was established in 2007 (five years prior to the submission of the instant H-1B petition) and has three employees. The petitioner did not state the total number of individuals who currently or in the past have served in the proffered position, nor did it provide any evidence regarding its hiring practices, or whether other individuals who currently or in the past have served in the proffered position have held bachelor's degrees in a specific specialty. The petitioner did not submit any documentation regarding its teachers' credentials (e.g., transcripts, diplomas) and evidence to establish their employment with the petitioner (e.g., pay statements, wage reports). Notably, the petitioner did not provide evidence regarding the type of Montessori credential it has required for its current and prior teachers.<sup>7</sup>

Upon review of the record of proceeding, the petitioner has not provided sufficient probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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, or its equivalent.

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<sup>7</sup> However, even if the petitioner had provided evidence proving that it has always required full Montessori credentials of all of its instructors, the petitioner would still need to establish that performance of the duties of the proffered position requires theoretical and practical application of a body of highly specialized knowledge requiring the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. Further the petitioner would need to show that its hiring history of degreed individuals does not simply reflect a *preference* for individuals with such degrees.

In the record of proceeding, counsel claims that "[redacted] teaching is based on a highly specialized educational method." The AAO acknowledges that the petitioner and counsel may believe that the proffered position qualifies as a specialty occupation under this criterion of the regulations. However, the AAO reviewed the documentation submitted by the petitioner and finds that it fails to support the assertion that the nature of the specific 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, or its equivalent. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

In support of the petition, the petitioner submitted various documents, including several articles regarding the Montessori Method of education and related materials, along with information regarding the petitioner's business operations. The AAO reviewed all of the evidence in the record; however, it does not find that this evidence establishes that nature of the specific 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, or its equivalent. In this regard, the AAO here incorporates into this analysis this decision's earlier comments and findings regarding the generalized level of the information and evidence provided with regard to the proposed duties.

Additionally, the AAO here reiterates its earlier comments and findings with regard to the fact that the neither the [redacted] indicate that the position of Montessori teacher is so complex or unique that it can only be performed by an individual with at least a baccalaureate in a specific specialty, or its equivalent. Moreover, upon review of the record, the petitioner has failed to establish that the nature of the duties of the proffered position 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, or its equivalent.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

(b)(6)

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.