

(b)(6)

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



U.S. Citizenship  
and Immigration  
Services

DATE: **NOV 15 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)

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

*N. B.*  
for

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center (hereinafter "the 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 Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an information technology solutions and services company established in 2011. In order to employ the beneficiary in what it designates as a "Compliance Officer/Regulatory Affairs Specialist" 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 the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Counsel for the petitioner submitted an appeal of the decision. On appeal, counsel asserts that the director's basis for denial of the petition on the specialty occupation issue was erroneous and contends that the petitioner satisfied all evidentiary requirements. In support of this assertion, the petitioner submitted a brief and additional evidence.

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 director's 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's decision 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, and the petition will be denied.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. 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.

For an 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. 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.

In this matter, the petitioner indicated on the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a "Compliance Officer/Regulatory Affairs Specialist," to work on a part-time basis (20 hours per week) at a salary of \$26,000 per year.<sup>1</sup>

The petitioner 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 "Compliance Officers" – SOC (ONET/OES) Code 13-1041.00, at a Level I (entry level) wage.

In a letter of support dated March 24, 2013, the petitioner states that the beneficiary will be responsible for the following duties:

- Coordinate and document internal regulatory processes, such as internal audits, inspections, license renewals, or registrations. May compile and prepare materials for submission to regulatory agencies[;]
- Coordinate, prepare, or review regulatory submission[s] for domestic or international projects[;]
- Provide technical review of data or reports that will be incorporated into regulatory submissions to assure scientific rigor, accuracy, and clarity of presentation[;]

---

<sup>1</sup> The petitioner indicated in the Labor Condition Application that the hourly wage is \$24.91 per hour.

- Review product promotional materials, labeling, batch records, specification sheets, or test methods for compliance with applicable regulations and policies[;]
- Maintain current knowledge base of existing and emerging regulations, standards, or guidance documents[;]
- Interpret regulatory rules or rule changes and ensure that they are communicated through corporate policies and procedures[;]
- Determine the types of regulatory submissions or internal documentation that are required in situations such as proposed device changes or labeling changes[;]
- Advise project teams on subjects such as premarket regulatory requirements, export and labeling requirements or clinical study compliance issues[;]
- Prepare or maintain technical files as necessary to obtain and sustain product approval[;]
- Coordinate efforts associated with the preparation of regulatory documents or submissions[;] [and]
- Prepare or direct the preparation of additional information or responses as requested by regulatory agencies[.]

The petitioner also submitted a document entitled, "Employment Agreement," made and entered into on March 11, 2013, by and between the petitioner and the beneficiary, and an attached document, entitled "Exhibit A,"<sup>2</sup> both stating the following duties job duties for the proffered position:

Coordinate and document internal regulatory processes, such as internal audits, inspections, license renewals, or registrations. May compile and prepare materials for submission to regulatory agencies[.] Coordinate, prepare, or review regulatory submissions for domestic or international projects[.] Provide technical review of data or reports[.] Maintain current knowledge base[.]

In the letter of support, the petitioner states that the proffered position requires a Bachelor of Law degree (or the equivalent). The petitioner provided an "Evaluation of Academic Credentials," dated March 20, 2013, by [REDACTED] stating that the beneficiary's foreign education is the equivalent of a U.S. Juris Doctor degree.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 18, 2013. The director asked the petitioner to submit additional evidence to

---

<sup>2</sup> Exhibit A states that "[t]his Exhibit does not apply to Independent Contractors or to part-time employees. This Exhibit shall at all times be part of and subject to the terms of the Employment Agreement[.]"

establish that a specialty occupation position exists for the beneficiary.

On July 8, 2013, the petitioner responded to the RFE by providing further information regarding the proffered position and additional evidence. Specifically, the petitioner submitted, among other things, (1) its letter in response to the RFE, dated July 4, 2013, (2) a copy of the O\*NET OnLine Summary Report for the occupational code "13-1041.07-Regulatory Affairs Specialists," and (3) several job vacancy announcements. The petitioner also resubmitted an affidavit of [REDACTED] President of [REDACTED], dated March 28, 2013.

In its letter in response to the RFE, the petitioner provided a modified list of the duties for the proffered position with the percentage of time that the beneficiary would devote to each such duty, as set forth below:

- Coordinate and document internal regulatory processes, such as internal audits, inspections, license renewals, or registrations. May compile and prepare materials for submission to regulatory agencies – 20%[;]
- Coordinate, prepare, or review regulatory submission[s] for domestic or international projects – 10%[;]
- Provide accurate and timely communications to IT and impacted management to discuss identified deficiencies – 5%[;]
- Provide technical review of data or reports that will be incorporated into regulatory submissions to assure scientific rigor, accuracy, and clarity of presentation – 10%[;]
- Perform periodic audits from both a procedural and transactional perspective – 5%[;]
- Review product promotional materials, labeling, batch records, specification sheets, or test methods for compliance with applicable regulations and policies – 5%[;]
- Maintain current knowledge base of existing and emerging regulations, standards, or guidance documents – 5%[;]
- Interpret regulatory rules or rule changes and ensure that they are communicated through corporate policies and procedures – 5%[;]
- Determine the types of regulatory submissions or internal documentation that are required in situations such as proposed device changes or labeling changes – 5%[;]
- Advise project teams on subjects such as premarket regulatory requirements, export and labeling requirements or clinical study compliance issues – 5%[;]

- Prepare or maintain technical files as necessary to obtain and sustain product approval – 10%[;]
- Coordinate efforts associated with the preparation of regulatory documents or submissions – 5%[;] [and]
- Prepare or direct the preparation of additional information or responses as requested by regulatory agencies – 10%[.]

On July 11, 2013, the director denied the petition. 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. Counsel for the petitioner submitted a timely appeal of the denial of the H-1B petition.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. 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. The AAO, however, will first make some preliminary findings that are material to the determination of the merits of this appeal.

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."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge gained through the attainment of at least a baccalaureate degree in a specific discipline. The AAO finds that the petitioner has not done so.

The AAO observes that the petitioner submitted job duties for the proffered position that are taken verbatim from the job description for the occupation "Regulatory Affairs Specialists" as stated in

the Occupational Information Network (O\*NET) OnLine Summary Report. Specifically, the occupational category "Regulatory Affairs Specialists" is described in O\*NET, as follows:

Coordinate and document internal regulatory processes, such as internal audits, inspections, license renewals, or registrations. May compile and prepare materials for submission to regulatory agencies.

### Tasks

- Coordinate, prepare, or review regulatory submissions for domestic or international projects.
- Provide technical review of data or reports that will be incorporated into regulatory submissions to assure scientific rigor, accuracy, and clarity of presentation.
- Review product promotional materials, labeling, batch records, specification sheets, or test methods for compliance with applicable regulations and policies.
- Maintain current knowledge base of existing and emerging regulations, standards, or guidance documents.
- Interpret regulatory rules or rule changes and ensure that they are communicated through corporate policies and procedures.
- Determine the types of regulatory submissions or internal documentation that are required in situations such as proposed device changes or labeling changes.
- Advise project teams on subjects such as premarket regulatory requirements, export and labeling requirements, or clinical study compliance issues.
- Prepare or maintain technical files as necessary to obtain and sustain product approval.
- Coordinate efforts associated with the preparation of regulatory documents or submissions.
- Prepare or direct the preparation of additional information or responses as requested by regulatory agencies.

Occupational Information Network (O\*NET) OnLine, "Regulatory Affairs Specialists" – Code 13-1041.07, on the Internet at <http://www.onetonline.org/link/summary/13-1041.07> (last visited Oct. 30, 2013).

The AAO notes that copying a job description from the O\*NET (or other source) is generally not sufficient for establishing H-1B eligibility. That is, while this type of generalized description may

be appropriate when defining the range of duties that may be performed within an occupational category, it cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval as it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business activities. More specifically, in establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

Such generalized information does not in itself establish any 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, 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 duties and responsibilities of the proffered position.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.

Nevertheless, the AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. 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. It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties of the proffered position into each basis discussed below for dismissing the appeal.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO 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)(I), 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 that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in a "Compliance Officer/Regulatory Affairs Specialist" 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 U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Compliance Officers."

The AAO reviewed the information in the *Handbook* regarding the occupational category "Compliance Officers" and notes that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

#### **Data for Occupations Not Covered in Detail**

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

---

<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/oooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Oct. 30, 2013).

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.<sup>4</sup> The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

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

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

**Compliance Officers**

(O\*NET [13-1041.00](#), [13-1041.01](#), [13-1041.02](#), [13-1041.03](#), [13-1041.04](#), [13-1041.06](#), and [13-1041.07](#))

---

<sup>4</sup> The AAO notes that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

Examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits. Perform other compliance and enforcement inspection and analysis activities not classified elsewhere. Excludes "Financial Examiners" (13-2061), "Tax Examiners and Collectors, and Revenue Agents" (13-2081), "Occupational Health and Safety Specialists" (29-9011), "Occupational Health and Safety Technicians" (29-9012), "Transportation Security Screeners" (33-9093), "Agricultural Inspectors" (45-2011), "Construction and Building Inspectors" (47-4011), and "Transportation Inspectors" (53-6051).

- 2010 employment: **216,600**
- May 2010 median annual wage: **\$58,720**
- Projected employment change, 2010-20:
  - Number of new jobs: **32,400**
  - Growth rate: **15 percent (about as fast as average)**
- Education and training:
  - Typical entry-level education: **Bachelor's degree**
  - Work experience in a related occupation: **None**
  - Typical on-the-job-training: **Moderate-term on-the-job training**

*Id.*, available on the Internet at <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Oct. 30, 2013).

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

The AAO notes that in the letter in response to the RFE, dated July 4, 2013, the petitioner states the following:

In summary, Beneficiary will be working 20 hours per week in the specialty occupation of a Compliance Officer/Regulatory Affairs Specialist. Her level of responsibility will be at the first level. . . .

All legal counsel do similar type of work in that they research and study all applicable regulations, find out what actions are being taken or need to be taken by their clients, and advise on whether such actions comply with the law or how the actions can be made compatible with prevalent regulations[] [o]r if any action does not satisfy regulatory criteria, what steps can be taken so as to make them adhere to statutes.

In the brief on appeal, the petitioner states the following:

It seems that the Service has only perfunctorily read Petitioner's response to the [RFE]. . . . Petitioner has stated clearly, and repeatedly, that Beneficiary is discharging the duties of an in-house counsel. An in-house counsel is a lawyer (also called attorney) in every respect of the word but who also provides his/her legal services to one client, namely, the corporation that employs him/her. However, the duties[,] etc. of an in-house counsel mirror in almost every respect the duties of an outside attorney working in a law firm who practices in the same area as the in-house counsel. . . .

It is evident that unlike what the Service states in the Denial, it did actually look only at Beneficiary's title rather than her job duties. For if the job duties had been seen and reflected over, it would have been evident that the job title to look at in the [Handbook] is 'Lawyer,' and not Compliance Officer/Regulatory Affairs Specialist since that is a designation used in the industry to identify a particular type of in-house lawyer.

The petitioner's contention, on appeal, that the proffered position is that of a "Lawyer" is inconsistent with the information that the petitioner submitted on the LCA and with the initial petition. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The petitioner is required to provide, at the time of filing an LCA, the correct job title and SOC (O\*NET/OES) Code for the proffered position. The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). *See* 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). According to section 212(n)(1) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees

with similar experience and qualifications who are performing the same services. *See Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7<sup>th</sup> Cir. 2010). To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1), by allowing that petitioner to simply submit an LCA for a different occupation and at a lower prevailing wage than the one being petitioned for. In this matter, this would result in an LCA certified for a Level I prevailing wage of \$24.91 per hour for the occupational classification of "Compliance Officer" when a certified LCA should have been submitted for the occupational classification of "Lawyer" with a minimum, Level I prevailing wage of \$40.61 per hour.<sup>5</sup> The attested salary of \$26,000 per year on the Form I-129 would fall well below that required by law if the proffered position were a lawyer.<sup>6</sup> Therefore, if the position is "Lawyer," as the petitioner claims on appeal, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition.<sup>7</sup>

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition 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 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 requires 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.

---

<sup>5</sup> See Foreign Labor Certification Data Center, Online Wage Library, OES/SOC Title: Lawyers – OES/SOC Code: 23-1011, available on the Internet at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=23-1011&area=36084&year=14&source=1> (last accessed on Oct. 30, 2013).

<sup>6</sup> Based on part-time work of 20 hours per week, the annual salary of a lawyer at a Level I wage would be \$42,234.40.

<sup>7</sup> Since the LCA and the instant petition were not submitted for the occupational category "Lawyers," the AAO will not discuss whether such occupation is a specialty occupation and whether the beneficiary is qualified for such an occupation.

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*, or other authoritative source, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference its previous discussion on the matter.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner relies on an affidavit of [REDACTED] President, [REDACTED] dated March 28, 2013. In his affidavit, Mr. [REDACTED] states the following:

We currently employ a total of 128 employees with estimated gross annual income for 2012 is [sic] approximately \$24 million. Out of 128 employees, 1 of [sic] individuals [sic] employed in the capacity of HR/Compliance Officer or in roles substantially similar to such an occupational title who [sic] have attained at least a baccalaureate level of education.

Mr. [REDACTED] asserts that “an individual employed in this capacity must also possess a superior knowledge of various technical components of the business,” and that “the position of HR/Compliance Officer requires at least a Bachelor’s Degree in Law or any related field. . . .”

For the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. The record is devoid of sufficient information regarding [REDACTED] to conduct a legitimate comparison of the organization to the petitioner. Without documentary evidence that another organization is similar to the petitioner, an affidavit submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements) may be considered. It is not sufficient for the petitioner to claim that [REDACTED] is the “direct competitor” of the petitioner without providing corroborating evidence to support that [REDACTED] is a similar organization that operates in the same industry as the petitioner. 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)). Here, Mr. [REDACTED] affidavit neither describes [REDACTED] nor makes any claims that [REDACTED] operates in the same industry as the petitioner. Moreover, based on the information alleged in the affidavit, it appears that [REDACTED] may not be a similar organization to the petitioner as

█ has more employees than the petitioner and what appears to be a much higher estimated gross annual income (although it is difficult to compare such information for different years).<sup>8</sup>

In addition, Mr. █ affidavit refers to an employee's educational qualification rather than demonstrating that its position of HR/Compliance Officer requires a minimum of a bachelor's degree in a specific specialty, or its equivalent. The affidavit further lacks specificity as to how many individuals █ has hired over the years with a bachelor's degree in a specific specialty for the HR/Compliance Officer position. Thus, contrary to the purpose for which the affidavit was submitted, the affidavit does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the petitioner's industry in parallel positions among similar organizations.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner also submitted copies of five job vacancy announcements. Upon review of the documentation, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

The AAO reviewed the job announcements submitted by the petitioner. The petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Upon review of the documents, the AAO finds that they do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

For instance, the advertisements include positions with █ "a global leader in professional services that provides technology consulting, staffing solutions, corporate training and human capital management," and █ a company that appears to be in the telecommunications services industry. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Furthermore, the petitioner submitted job postings for which little or no information regarding the employers is provided. For example, the petitioner submitted job postings by staffing/placement companies, such as █ that is recruiting for its undisclosed client; by █ that appears to be recruiting for an undisclosed client in █ NJ; and by █ that appears to be recruiting for an undisclosed client in █ FL. The postings lack information regarding the actual employers. Consequently, the record is devoid of sufficient information regarding the advertising organizations to conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to

---

<sup>8</sup> In the affidavit, Mr. █ stated his organization's estimated gross annual income for 2012, whereas on the Form I-129, the petitioner provided its projected gross annual income for 2013. Since no corroborating documentation was provided to the AAO, it is unclear whether Mr. █ may have been referring to his organization's estimated gross annual income for 2012 or 2013.

supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

Thus, the record is devoid of sufficient information regarding the five advertising companies to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, job advertisements submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Thus, for the reasons discussed above, the petitioner's reliance on the job vacancy advertisements is misplaced. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.<sup>9</sup>

Therefore, 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 its equivalent, is common in the petitioner's industry for 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 petitioner also has not satisfied 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

---

<sup>9</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just five job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of Compliance Officer/Regulatory Affairs Specialist at an information technology solutions and services company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

While some of the courses listed on the copy of the beneficiary's transcript for the Bachelor of Laws degree from [REDACTED] in India may be beneficial 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, are required to perform the duties of the particular position here proffered.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. As previously noted, the LCA indicates a wage level based upon the occupational classification "Compliance Officers" at a Level I (entry level) wage. This wage level designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate 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.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

The evidence of record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other "Compliance Officer/Regulatory Affairs Specialist" 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 the equivalent. That is, the wage level designated by the petitioner in the LCA is not consistent with claims that the position would entail any particularly complex or unique duties relative to other such positions.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or

unique relative to other "Compliance Officer/Regulatory Affairs Specialist" positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past. Here, the petitioner did not submit evidence to satisfy this criterion.

To merit approval under 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 proposed 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 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 employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. 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 proffered 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 in a specific specialty. *See Id.* at 388.

Here, the petitioner did not submit any evidence that it has previously employed only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires a petitioner to establish that 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 in a specific specialty, or its equivalent.

Upon review of the record of the proceeding, the AAO notes that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. There is insufficient evidence in the record to establish that the duties of the proffered position require 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 AAO finds that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. That is, the petitioner has not established that the nature of the duties of the position is so specialized and complex that 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 documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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