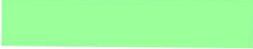




U.S. Citizenship
and Immigration
Services

(b)(6)

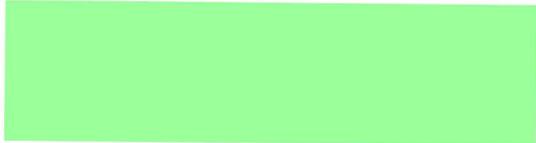


DATE: **OCT 02 2013** Office: CALIFORNIA SERVICE CENTER File: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

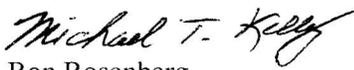


INSTRUCTIONS:

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,

for 
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The petitioner, through counsel, filed a motion to reopen and reconsider with the California Service Center (CSC), and the motion was granted. Upon reconsideration, the director again denied the 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, through counsel, submitted a Petition for a Nonimmigrant Worker (Form I-129) to the CSC. On the Form I-129 visa petition, the petitioner¹ describes itself as a personnel management and job placement service² with 60 employees³, established in 2000. In order to employ the beneficiary in a position to which it assigned the job title of "Public Relations Officer," the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, filed a motion to reopen and reconsider with the CSC, and the motion to reopen was granted. Upon reconsideration, the director denied the petition again on the basis that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. The petitioner, through counsel, submitted an appeal of the decision. On appeal, counsel states that the director's basis for denial of the petition on the specialty occupation issue was erroneous. In support of this position, counsel submits a brief and supporting documentation.

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 denying the petition; (5) the petitioner's Form I-290B (Notice of Motion), brief, and supporting documentation; (6) the director's notice granting the motion, and upon reconsideration, denying the petition; and (7) the petitioner's Form I-290B (Notice of Appeal), brief, and supporting documentation. 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.

¹ The petitioner stated that it is part of [REDACTED]. The petitioner further stated that "[REDACTED] is dedicated to pairing exceptional individuals and multinational companies. . . ."

² In the Form I-129 H-1B Data Collection and Filing Fee Exemption Supplement, at Part A, section 6, the petitioner lists the North American Industry Classification System (NAICS) code as "561310" which corresponds to "Employment Placement Agencies" under the 2002 NAICS definition.

³ The AAO notes that on the Form I-129 the petitioner stated that it has 60 employees, whereas the petitioner's "Organizational Chart" indicates that the petitioner has 69 employees. No explanation was provided for this discrepancy.

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 in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a "Public Relations Officer" to work on a full-time basis at a salary of \$34,362 per year.

The Labor Condition Application (LCA) submitted by the petitioner for this petition is one that was certified for use with a job prospect that would be within the occupational classification of "Public Relations Specialists" – SOC (ONET/OES) Code 27-3031.00, at a Level I wage.

In its support letter, dated March 27, 2012, the petitioner provided the following description of the proffered position:

[The beneficiary] will assume the professional position of Public Relations Officer within our organization. In such capacity, she will plan, develop and conduct public relations programs designed to create goodwill for our firm and promote our services. In conjunction with executive management, she will develop strategic public relations programs in accordance with company objectives and goals. [The beneficiary] will further prepare short and long-term forecasts for the company and conceive public relations programs in accordance

with those forecasts. Her responsibilities will include planning the dissemination of information designed to provide both clients and prospective clients with information about our current services, expanded services and accomplishments in the field. In this context, she will choose advertising media and purchase advertising space, composing advertising copy in the Japanese language and lay out artwork. She will review and edit advertising and promotional materials to insure that they are of the highest quality standards to insure that they properly convey and project the quality of our services and our corporate image. She will also coordinate with executive management to prepare client proposals, presentations and continually develop our website, all in the Japanese language. She will write or edit business communication and letters prepared by management as requested.

[The beneficiary] will be expected to cultivate relations with the Japanese media and to become highly informed on developments in our field that offer opportunities to promote both our services and corporate image. She will utilize her communications and language skills with our multinational clients, all of which are Japanese owned, both in the U.S. and with their parent companies in Japan and with the Japanese industry and media representatives in the U.S. and Japan.

The petitioner submitted a copy of the beneficiary's transcript from [REDACTED] which indicates that the beneficiary has a Bachelor of Science degree with a major in applied advertising and a minor in art from [REDACTED]

The petitioner stated that "[t]he requirement for a bachelor's degree in Advertising is driven by the complexity, importance, and professional nature of the duties of the position offered." Further, the petitioner stated that "[w]e rely, for our very survival, on the high quality of our public relations activities which are, in turn, dependent upon the specialized services of an individual with a minimum of a bachelor's degree in Advertising or a closely related communications discipline." The petitioner also added that "[the beneficiary] has been performing in the position of Public Relations Officer with our organization under authorized practical training since September 2011."

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary and that the beneficiary is qualified to perform services in a specialty occupation. The director outlined the specific evidence to be submitted.

Counsel for the petitioner responded to the RFE and submitted the petitioner's response letter and additional evidence. In the letter submitted in response to the RFE, that appears to be dated June 8, 2012, the petitioner provided the following revised description of the duties of the proffered position and a break-down of the number of hours per week devoted to each duty:

Public Relations/Strategic Planning

(These job duties will encompass 50% of [the beneficiary's] time or 20 hours per week)

- In conjunction with senior management, [the beneficiary] will plan overall public relations strategy designed to provide both clients and prospective clients with information about our current services, expanded services and accomplishments in the field (20% or 8 hours per week).
- She will be expected to cultivate relations with the Japanese media as well as other appropriate venues and to become highly informed on developments in our field that offer opportunities to promote both our services and corporate image (20% or 8 hours per week).
- [The beneficiary] will lead, develop and implement PR, marketing and advertising research to gather appropriate business intelligence, as needed for the completion of her duties (5% or 2 hours per week).
- [The beneficiary] will prepare short and long-term forecasts for the company and conceive public relations programs in accordance with those forecasts (5% or 2 hours per week).

Advertisements, Promotional Materials and Client Communication

(These job duties will encompass 40% of [the beneficiary's] time or 16 hours per week)

- Once plans are finalized, [the beneficiary] will chose advertising media and purchase advertising space, composing advertising copy in the Japanese language and lay out artwork. She will also direct the preparation of press releases and coordinate placement with selected publishers (15% or 6 hours per week).
- [The beneficiary] will continually communicate with our multinational clients both in the U.S. and with their parent companies in Japan. This communication will foster business relationships, gather necessary public relations and business intelligence as well as coordinate public relations and management projects already underway (15% or 6 hours per week).
- In both English and Japanese, [the beneficiary] will also write policy statements, speeches, promotional articles, and any other related materials that are statements of our company's public policies and services (5% or 2 hours per week).
- [The beneficiary] will review and edit advertising and promotional materials to ensure that they are of the highest quality standards and to ensure that they properly convey and project the quality of our services

and our corporate image (5% or 2 hours per week).

Public Relations Intelligence

(These job duties will encompass 10% of [the beneficiary's] time or 4 hours per week)

- [The beneficiary] will monitor both the U.S. and Japanese press concerning topics that impact Renaissance Resources' business including international trade issues, international employment and job data, union vs. non-union employment, creation of local employment, and loss/gain of jobs in the U.S. industries that Renaissance Resources serves (5% or 2 hours per week).
- [The beneficiary] will utilize these perspectives to prepare press releases, web site text and company brochures as well as other public relations and promotional material and will advise senior management of any significant developments and will regularly report to all staff members on the issues and responses (5% or 2 hours per week).

The issue before the AAO is whether the petitioner has provided, by a preponderance of the evidence, documentary 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.

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)(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 that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in a public relations officer position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered 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 a 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.⁴ As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational category "Public Relations Specialists." The *Handbook* lists this occupational category as "Public Relations Managers and Specialists."

The AAO reviewed the information in the *Handbook* regarding the occupational category "Public Relations Managers and Specialists." However, the *Handbook* does not indicate that these positions comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Public Relations Manager or Specialist" states the following about this occupational category:

Public relations managers and specialists typically need a bachelor's degree. Public relations managers also need related work experience.

Education

Public relations specialists typically need a bachelor's degree. Employers usually want candidates who have studied public relations, journalism, communications, English, or business.

For public relations management positions, a bachelor's degree in public relations, communication, or journalism is generally required. Courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing are helpful. In addition, some employers prefer a master's degree in public relations or journalism. In 2010, one-fourth of public relations managers held a master's degree.

Training

Public relations specialists typically are trained on the job, either in a formal program or by working closely under more experienced staff members. Entry-level workers often maintain files of material about an organization's activities, skim newspapers and magazines for appropriate articles to clip, and assemble information for speeches and pamphlets. Training typically lasts between 1 month and 1 year. After gaining experience, public relations specialists write news releases, speeches, and articles for publication or plan and carry out public relations programs.

⁴ 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.

Certification

The Public Relations Society of America offers a certification program for public relations managers that is based on years of experience and on passing an exam. The Accredited Business Communicator credential is also available from the International Association of Business Communicators.

Work Experience

Public relations managers must have several years of experience in a related public relations position. Lower level management positions may require only a few years of experience, whereas directors are more likely to need 5 to 10 years of related work experience.

Important Qualities

Interpersonal skills. Public relations managers and specialists deal with the public regularly; therefore, they must be open and friendly to build rapport and get good cooperation from their media contacts.

Organizational skills. Public relations managers and specialists are often in charge of managing several events at the same time, requiring superior organizational skills.

Problem-solving skills. Public relations managers and specialists sometimes must explain how the company or client is handling sensitive issues. They must use good judgment in what they report and how they report it.

Research skills. Public relations managers and specialists must often do research, including interviewing executives or other experts, to get the information they need.

Speaking skills. Public relations managers and specialists regularly speak on behalf of their organization. When doing so, they must be able to explain the organization's position clearly.

Writing skills. Public relations managers and specialists must be able to write well-organized and clear press releases and speeches. They must be able to grasp the key messages they want to get across and write them in a short, succinct way to get the attention of busy readers or listeners.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Public Relations Managers and Specialists, available on the Internet at <http://www.bls.gov/ooh/management/public-relations-managers-and-specialists.htm#tab-4> (last visited August 29, 2013).

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the prevailing wage for the proffered position as wage for a Level I (entry level) position on the

LCA.⁵ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.⁶ That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

The *Handbook* does not state that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into the proffered position. As stated above, although this passage of the *Handbook* reports that “[p]ublic relations specialists typically need a bachelor’s degree,” the *Handbook* also states that “[e]mployers usually want candidates who have studied public relations, journalism, communications, English, or business.” Thus,

⁵ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁶ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Id.

this is not indicative of an occupation for which there is a normal requirement for at least a baccalaureate or higher degree, in a specific specialty, or its equivalent.

Also, as noted above, the *Handbook* recognizes that degrees in various fields, i.e., public relations, journalism, communications, English, or business, are acceptable for entry into this field. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, 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 authoritative sources) that supports a favorable finding with regard to this criterion. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner and counsel also provided (1) an opinion letter, dated March 28, 2012, prepared by Dr. [REDACTED] Professor of Marketing and Former Graduate Program Chair, [REDACTED] New York; and (2) an opinion letter, dated November 15, 2012, prepared by [REDACTED] Ph.D., Dean, On-Line and Outreach Education, [REDACTED] Kansas.

The AAO will first discuss Dr. [REDACTED]'s letter. In his letter, Dr. [REDACTED] states that the proffered position is "specialized in nature, requiring the ability to apply the knowledge associated with the attainment of a bachelor's-level degree in Communications, Advertising, Public Relations, Marketing, or a related field."

Dr. [REDACTED] provided a summary of his education and experience and attached a copy of his curriculum vitae. He described his qualifications, including his educational credentials, professional experience, organizations that he belongs to and/or has served on. He also provided information regarding his research interests, and he provided a partial list of the publications he has written.

Based upon a complete review of Dr. [REDACTED]'s letter and curriculum vitae, the AAO first finds that Dr. [REDACTED] has not established that he in fact possesses expertise or specialized knowledge regarding the specific issue on which he opines, namely, the qualification of the proffered position as an H-1B specialty occupation as defined by the applicable statutory and regulatory

provisions earlier cited in this decision. Further, neither the letter nor the accompanying curriculum vitae establishes a sufficient factual foundation for the AAO to defer, or accord probative weight, to Dr. [REDACTED] view on the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge that would be helpful to the AAO with regard to understanding the current recruiting and hiring practices of the petitioner or similar organizations for public relations officer positions.

Also, Dr. [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on the particular issues upon which he opines in this proceeding. Further, there is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions in the petitioner's industry for similar organizations, and there is no indication of that he has been recognized by any professional organizations as an authority on those specific requirements.

Moreover, Dr. [REDACTED] did not provide any documentation to establish his credentials as a recognized authority on the relevant industry-hiring standards. He claims to possess expertise in international business operations, but he did not identify the specific elements of his knowledge and experience that he may have applied in reaching his conclusions here. For example, the opinion letter contains no evidence that it was based on scholarly research conducted by Dr. [REDACTED] in the specific area upon which he is opining. He claims that as an owner of his own consulting firm, he has "worked with a wide range of client companies, including companies which have undergone sharp and rapid change in the size and scope of business operations." However, he does not provide documentary evidence establishing why USCIS should defer to him in the specific area in which he is opining; nor does he provide an adequate factual and analytical foundation for the ultimate conclusion regarding the education required for the position (for example, statistical surveys, authoritative industry publications, professional studies, supportive DOL publications, or synopses of personal observations of the actual performance of the proffered position within the petitioner's day-to-day operations and associated work products).

Further, Dr. [REDACTED] does not show how his pronouncement that the proffered position is a specialty occupation is founded upon specific, concrete aspects of the proffered position as specifically performed within the context of the petitioner's business. Additionally, the very fact that he concludes a degree requirement from the generalized treatment of the proffered position that appears in his letter undermines the credibility of his opinion. There is no evidence that Dr. [REDACTED] has visited the petitioner's business, studied its past public relations practices, or assessed the particular practical and theoretical applications of specialized knowledge that the beneficiary would apply in actual performance of the proffered position within the petitioner's particular operations, interviewed the petitioner's employees about the nature of their work, or documented the knowledge that they apply on the job. In any event, Dr. [REDACTED] does not supplement his evaluation with any persuasive documentation of a serious and deliberate review of the substantive nature of the particular position in question. He has not provided sufficient facts that support his ultimate conclusions about the educational requirements of the proffered position and the specialty occupation issue.

Dr. [REDACTED] also states that “it is fully reasonable (and indeed a matter of business necessity) for a company such as the [petitioner] – with substantial consulting engagement across a variety of industries and functional business areas, including substantial business based upon the successful development of PR initiatives . . . to require that a candidate hired for the position possess a specialty/bachelor’s-level background in an appropriate communications/PR or related field.” Here, Dr. [REDACTED] asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement, such as a labor market survey or study, and, notably, he fails to address the countervailing information that appears in the *Handbook*. 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)).

Next, Dr. [REDACTED] cites as bases for his opinion documents that he has not provided to USCIS, so as to establish whether his statements actually conform to the documents provided to him, whether his findings and ultimate conclusions actually comport with the content of those documents, and whether the documents provided to him materially conform to the documentary evidence in the record of proceeding, so as to be relevant to this proceeding. This aspect of the opinion letter itself renders the reliability of the letter for the purposes of this appeal questionable. The letter states that the professor “reviewed an outline of the job duties required for the subject position” – but that outline is not provided. Likewise, the professor’s letter, which specifically names the beneficiary on the front cover, states on the last page that the opinion is based “on copies of the original documents provided by the candidate.” The letter fails to identify whatever those documents were that were provided by the candidate, however.

Moreover, Dr. [REDACTED] states that “a Public Relations Officer who will be working at an *advanced level* in performing these duties is required to demonstrate academic training in Communication, Advertising, Public Relations, Marketing, or a related field, at no less than a bachelor’s level.” (Emphasis added.) However, it must be noted that there is no indication that the petitioner advised Dr. Gould that the petitioner assigned a “Level I” wage rate to the proffered position (under the occupational classification of “Public Relations Specialists”), for entry-level employees who are only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment (as indicated by the wage-level on the LCA). It appears that Dr. [REDACTED] would have found the aforementioned information relevant for his opinion letter. Without this basic piece of information, the petitioner has not demonstrated that Dr. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner’s position, and the job duties and responsibilities. In any event, Dr. [REDACTED] has not established a persuasive basis for regarding the proffered position as “advanced level” or for attributing to the “advanced level” organizational status a requirement for attainment of any specific educational level. Additionally, Dr. [REDACTED]’s pronouncements regarding “advanced level” dimensions to the job materially conflict with, and so are undermined by, that Level I LCA wage-level designation.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the advisory opinion rendered by Dr. [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by Dr. [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating

the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record. Therefore, the AAO finds that the letter from Dr. [REDACTED] does not establish that the proffered position is a specialty occupation. As such, neither Dr. [REDACTED]'s findings nor his ultimate conclusions are worthy of any deference, and his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. §214.2(h)(4)(iii)(A).

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion, the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into its analysis of each of the criteria bases in this decision for dismissing the appeal.

The AAO will now address Dr. [REDACTED]'s letter, submitted by the petitioner on appeal. As previously mentioned, Dr. [REDACTED] is Dean of On-Line and Outreach Education at [REDACTED] Kansas. Dr. [REDACTED] is also an on-line instructor at [REDACTED] and teaches a course titled, "[REDACTED]" and has previously held various positions at [REDACTED]. The AAO notes that Dr. [REDACTED]'s opinion letter is on [REDACTED]'s letterhead. It also bears mention that community colleges do not offer four-year degrees.

In her letter, Dr. [REDACTED] opines that "the position . . . at [the petitioner] qualifies as a specialty occupation and requires a minimum of a Bachelor's Degree in Advertising or a closely related field. . . ." She also states that "the degree represented on the transcripts issued on behalf of [the beneficiary] from [REDACTED] indicate that [the beneficiary] is qualified for the position described based on her U.S. education."

Dr. [REDACTED] provided a summary of her education and experience and attached a copy of her curriculum vitae. She described her qualifications, including her educational credentials, employment history, volunteer experience, memberships in various organizations, and community activities. She also provided a list of the publications she has written, and a list of her keynote presentations and conference papers.

Despite Dr. [REDACTED]'s various academic accomplishments, teaching positions and publications, her opinion letter and her attached *curriculum vitae* do not provide sufficient information to establish that Dr. [REDACTED] has expertise or any authoritative level of knowledge in public relations. Dr. [REDACTED] states that "[l]ooking at the duties and tasks of the [proffered position] for [the petitioner]⁷, it is my opinion that the job duties and tasks for this position are functionally

⁷ Similar to Dr. [REDACTED], Dr. [REDACTED] cites as bases for her opinion documents that she has not provided to USCIS, so as to establish whether her statements actually conform to the documents provided to her, whether her findings and ultimate conclusions actually comport with the content of those documents, and whether the documents provided to her materially conform to the documentary evidence in the record of

(b)(6)

the same as those described by the U.S. Department of Labor and an industry norm for the described public relations specialty positions in similar industries.” Also, Dr. [REDACTED] bases her opinion on two job postings that she found on the Internet (copies of which were not provided) and upon what she claims is her research and experience. However, she did not provide any documentary evidence to establish that the job postings are for similar organizations to the petitioner and for similar positions as the proffered position. Moreover, she did not specify what research and experience she was referring to. Dr. [REDACTED] does not reference any of her publications or list the organizations on which she relies on as a basis for her opinion. Thus, the evidence of record does not establish that Dr. [REDACTED] based her opinion upon a reliable analytical and factual foundation or on any objective evidence. Instead, the AAO finds, Dr. [REDACTED] largely restates the proffered position description, restates the O*NET OnLine summary for public relations specialists, and restates information from the beneficiary’s transcript as provided by the petitioner. The AAO may, in its discretion, use as an advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. at 791. Therefore, the AAO finds that the letter from Dr. [REDACTED] does not establish that the proffered position is a specialty occupation. As a reasonable exercise of its discretion, the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency’s sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into its analysis of each of the criteria bases in this decision for dismissing the appeal.

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 within 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 required for entry. 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 first criterion of 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 first alternative prong 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,

proceeding, so as to be relevant to this proceeding. This aspect of the opinion letter itself renders the reliability of the letter for the purposes of this appeal questionable and, so, not worthy of any deference or weight.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

The petitioner and counsel submitted (1) copies of several job vacancy announcements; and (2) a letter, dated June 5, 2012, by [REDACTED] President, [REDACTED] to support their assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.

In the Form I-129 petition, the petitioner describes itself as a personnel management and job placement service, established in 2000, with 60 employees. The petitioner claims that it has a gross annual income of \$4 million. The petitioner did not disclose its net annual income. As previously noted, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code "561310" which corresponds to "Employment Placement Agencies" under the 2002 NAICS definition. The U.S. Department of Commerce, Census Bureau website defines the NAICS code 561310 by stating the following:

This industry comprises establishments primarily engaged in listing employment vacancies and in referring or placing applicants for employment. The individuals referred or placed are not employees of the employment agencies.

See U.S. Dep't of Commerce, U.S Census Bureau, 2002 NAICS Definition, 561310 – Employment Placement Agencies, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last viewed August 29, 2013).

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no evidence demonstrating that any of the advertising companies are similar in size and scope to that of the petitioner, a 60-person personnel management and job placement service. Thus, the record is devoid of sufficient information regarding the advertising companies to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, 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 and in its industry. When determining whether the petitioner and another 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 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. 190).

The AAO reviewed the job advertisements 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 a position with "a privately-held leading provider of enterprise integrated search technologies" in New York, NY and with the [REDACTED], a recruiter "[w]ith more than 360 locations worldwide." Without further information, the advertisement appears to be for organizations that are not similar in scope and size to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Furthermore, the petitioner submitted job postings for positions in different industries. For example, the petitioner submitted a job posting by [REDACTED] for a public relations manager position with an unidentified company. The posting lacks information regarding the actual employer, which, according to the language in the advertisement, may be a store and thereby in a different industry. The petitioner also submitted job postings for positions in different industries than the petitioner's industry, such as the posting by [REDACTED] which claims to be the 6th largest public relations agency in the country, and for an unidentified employer in the telecommunications/advertising industry in Austin, Texas. 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 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.

Moreover, the advertisements appear to be for more senior positions and/or do not appear to be for parallel positions. For instance, the position advertised by the [REDACTED] requires a degree and "3+ years of experience in Public Relations, preferably with some experience in a corporate setting," the position in New York, NY requires "3-5+ years PR/Communications experience," the position posted by [REDACTED] requires "at least 5 years [of] experience in marketing and/or special events/public relations" and a "[r]etail background [is] a plus," the position with [REDACTED] requires "8 years of experience in marketing, communications and/or public relations," and the position with an unidentified employer in Austin, Texas requires "five years of corporate communications experience." As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I low, entry-level position. Furthermore, some of the positions do not appear to have similar duties to the proffered position.

Additionally, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, one of the advertisements states a requirement for a Bachelor's degree and a preference (but not a requirement) for a degree in "Public Relations,

Communications, English or Journalism.” The position in New York, NY states that a “B.A. [is] required” and that a “Masters in PR or Journalism is a plus” (but not a requirement).

Again, the advertisements submitted by the petitioner do not establish that the petitioner has met this prong of the regulations. Thus, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

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.⁸

Next, the AAO turns to the [REDACTED]. In the [REDACTED] Ms. [REDACTED] states the following:

From a reading of [the petitioner’s] job description for the position of Public Relations Officer, both the description and job title are consistent with standard business practices and requirements within our industry in similarly sized companies. The required knowledge can only be acquired through a rigorous and extensive college level educational program in applied advertising or a closely related field. Employers universally require a four year baccalaureate degree where the research involves international operations, such as the one in question. . . .

Ms. [REDACTED] further states that “[p]osition requirements may vary slightly but most employers seek a candidate with a degree in a specialty such as applied advertising.”

Also, while Ms. [REDACTED] states that the petitioner and her firm “are very similar companies and in fact share a number of mutual clients,” Ms. [REDACTED] does not provide sufficient information to establish how the two companies are similar. The [REDACTED] lacks sufficient information regarding Ms. [REDACTED]’s organization to conduct a legitimate comparison of that organization to the petitioner. For instance, Ms. [REDACTED] does not provide information regarding her

⁸ Furthermore, 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 public relations officer at a personnel management and job placement service 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.

organization's scope of operations, level of revenue and staffing. In addition, she does not provide evidence that her organization has hired someone in a position similar to the proffered position. Moreover, the AAO notes that Ms. [REDACTED]'s signature appears to include a letter "t" at the end of her name, indicating that her name was possibly misspelled on the letter. This further leads to the possibility that the letter, purportedly by Ms. [REDACTED] may have been drafted by someone other than Ms. [REDACTED]. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. at 791.

Upon review of the APA Letter, the AAO finds that it does not establish that a requirement of at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are parallel to the proffered position; and located in organizations that are similar to the petitioner. Also, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the APA Letter into its analysis of each of the criteria bases in this decision for dismissing the appeal.

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 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 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 notes that in its letter in response to the RFE, the petitioner states that "the complex duties associated with the position of Public Relations Officer at [the petitioner] stems from the advanced nature of the position itself, and thus requiring [sic] a bachelor's level degree in a specific specialty." However, 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 public relations officer duties described comprise a position that would 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 it.

The AAO must question the level of complexity, independent judgment and understanding required for the proffered position as the submitted LCA was certified for a Level I entry-level position. The characterization of the position and the claimed duties and responsibilities as described in the record of proceeding conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. 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 his 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.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, while some of the courses listed on the copy of the beneficiary's transcript for the Bachelor of Science in Applied Advertising degree from [REDACTED] may be beneficial in performing certain duties of an public relations officer 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.

The evidence of record does not establish that this position is significantly different from other public relations officer positions such that it refutes the *Handbook's* information that there are various acceptable degrees for these positions, including a general-purpose degree such as business administration, for entry into the occupation. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than positions in the pertinent occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position of public relations officer is materially more complex or unique than other public relations officer positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent, the petitioner has not 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 the equivalent, for the position.

In the RFE response letter, dated June 8, 2012, the petitioner stated that it "has not in the past employed a Public Relations Officer." Thus, the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states “that the lack of prior hiring by the organization in the position should not prejudice the present hiring or adversely influence your decision. In sum, the prior hiring for this position is just not relevant.” The AAO disagrees with counsel and finds that the prior hiring history for a position is relevant to this third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). However, the petitioner is not penalized for its lack of a prior hiring history. Here, the AAO simply finds that the petitioner has not met the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails demonstrating that the petitioner routinely hired specialty-degreed individuals for the proffered position.⁹ However, the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) are still possible avenues for pursuit by a petitioner that has not satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 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 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. That is, 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. The AAO finds that, as evident in the duty descriptions that this decision earlier quoted from the record, the proposed duties are presented exclusively as generalized functions so abstractly rendered as to not convey the substantive nature that they would assume within this petitioner's particular business operations (that is, aside from the beneficiary's sometimes use of her asserted Japanese fluency – an aspect that is not indicative of a need for at least a bachelor's degree in any specific specialty).

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 of "Public Relations Managers and Specialists" and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I

⁹ While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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 degree requirement is only symbolic and 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").

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.

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.