



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 02 2013**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on May 30, 2012. In the Form I-129 visa petition, the petitioner describes itself as a law firm established in 1850. In order to continue to employ the beneficiary in what it designates as a "Financial Services/Bankruptcy & Creditors' Rights Paralegal" ("paralegal") 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 December 20, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. In support of this assertion, counsel 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 response to the RFE; (4) the director's denial letter; and (5) the Form I-290B 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 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.

Later in this decision, the AAO will also address an additional, independent ground, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit a Labor Condition Application (LCA) that complies with the applicable statutory and regulatory provisions. For this additional reason, the petition may not be approved, as this separate ground of ineligibility is considered an independent and alternative basis for denial.<sup>1</sup>

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a paralegal to work on a full-time basis at a rate of pay of \$54,600 per year. In a support letter dated May 9, 2012, the petitioner stated that the beneficiary would perform the following job duties:

- Draft motions, briefs and certifications based on contracts and loan documents for review by the supervising attorney
- Conduct client telephone and email interviews to acquire information necessary to complete proofs of claim
- Draft UCC filings for review by supervising attorney

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Draft and prepare summary sheets, pleadings and loan document boards, a duty which requires the ability and experience to review loan documents for required relevant information and an understanding of the inter-relationship of such documents, comprising the documentation package for a particular loan
- Review final client bills and draft cover letters to clients for attorney signature; track payments and outstanding receivables
- Draft correspondence to clients and opposing counsel for attorney signature
- File UCC Financial Statements in appropriate state and county jurisdictions and track return information
- File mortgages and collateral assignments in appropriate state and county filing offices and track return information
- Order searches, background checks, lien searches, take results and prepare summary sheets
- Review final loan closing documents, ensure that all documents have been properly completed and executed and all exhibits are attached and completed
- Draft closing binder indexes and prepare loan closing binders for client and firm
- Draft first drafts of discovery requests for attorney review
- Handle the electronic filing of pleadings with the Bankruptcy Court
- Draft first drafts of loan documents and commercial and residential foreclosure complaints
- Review foreclosure searches reports
- Review corporate documents

In its letter of support accompanying the initial I-129 petition, the petitioner described the education requirements for the proffered position as "a minimum of a Bachelor's degree in Finance, Public Administration, or a closely related field."

The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of her academic credentials and prior work experience with the petitioner. The petitioner provided copies of the beneficiary's diplomas and an evaluation of the beneficiary's credentials prepared by [REDACTED] which indicates that the beneficiary has the equivalent of a "[h]igh school diploma, [and] a bachelor's and master's degree in public administration from a regionally accredited institution." In addition, the petitioner submitted a copy of a diploma from [REDACTED] indicating that the petitioner was awarded an Associate in Applied Science degree in January 2009.

In addition, the petitioner submitted an 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 "Paralegals and Legal Assistants" - SOC (ONET/OES) code 23-2011 at a Level I (entry level) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on October 25, 2012. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to

establish that the proffered position qualifies as a specialty occupation.

On December 7, 2012, the petitioner responded to the director's RFE by providing a brief and additional evidence. Specifically, the petitioner submitted a copy of its response to an RFE issued in a prior H-1B petition.

The director reviewed the information provided by the petitioner. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on December 20, 2012. The petitioner submitted an 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 will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO will 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, U.S. Citizenship and Immigration Services (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."

Upon review of the record of proceeding, the AAO observes that the enclosed LCA does not appear to correspond to the petitioner's claims regarding the duties, responsibilities and requirements of the proffered position. Consequently, as will be discussed below, the petitioner has failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

More specifically, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Paralegals and Legal Assistants" at a Level I (entry level) wage. 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.<sup>2</sup> Prevailing wage determinations start with a Level I (entry) and

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<sup>2</sup> For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing*

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.<sup>3</sup> 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 as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL 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.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

In the instant case, the petitioner claims that the nature of the proffered position involves complex, unique and/or specialized tasks that appear to be inconsistent with a Level I wage classification. Specifically, although a Level I (entry level) designation is appropriate for positions requiring "only a basic understanding of the occupation," in its letter dated May 29, 2012, the petitioner claims that the position "requires someone with an advanced level of understanding of the Uniform Commercial Code (UCC), the financial lending process, and bankruptcy procedures." The petitioner further references "the sophisticated knowledge of financial and legal theories, principles,

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*Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>3</sup> A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

and procedures" required to perform the duties of the proffered position.

In its December 6, 2012 letter, the petitioner indicates that the proffered position requires "advanced knowledge of judgment lien law." The petitioner reiterated that the position requires "sophisticated knowledge of financial and legal theories, principles, and procedures." According to the petitioner, the position involves "highly specialized, complex knowledge" and requires knowledge of "complex areas of the law." The petitioner further claims that the duties involve "the most difficult areas of the law." Additionally, the petitioner states that the beneficiary must "understand the concepts behind the procedures, [to allow] her to exercise judgment in tackling more complex assignments."

The petitioner claims that the proffered position is not a "basic" position but rather there are "critical distinctions between the different types of paralegals that exist within the legal field." Further, the petitioner continues by stating that there are "varying levels of knowledge and skill sets, depending upon the field of specialization, the position's hierarchy within the organization, and even the reputation and quality of services of the organization itself." The petitioner claims that the duties of the proffered position are "more complex than those described in the OOH for a typical paralegal position." In addition, the petitioner states that "[the petitioner's] reputation and provision of only the highest-quality legal services must be considered as they certainly add specialization and complexity to the nature of the duties." The petitioner claims that its groups handle "only the most complex and challenging legal matters" and that "basic knowledge [for the proffered position] is simply not sufficient to provide the type of service [the petitioner's] clients demand." The petitioner also states that this is the only position within the practice group "supporting **both** transactional work and litigation (emphasis in original)."

Moreover, in an appeal brief dated January 17, 2013, the petitioner reiterates that the proffered position requires "an advanced understanding of the Uniform Commercial Code (UCC), the financial lending process, banking and securities regulations, and other sophisticated financial and legal theories, principles, policies, and procedures." In addition, the petitioner claims that "comprehensive and in-depth knowledge of finance and financial law" is "required to perform the job duties of the [proffered] position." The petitioner further stated that "basic knowledge of bankruptcy rules and procedures" is insufficient to "adequately perform the duties" of the position.

Based upon the petitioner's statements, it appears that the level of knowledge required to perform duties in the proffered position surpasses the "basic" level of knowledge required of a Level I position. Although a Level I position is specifically designated for "employees [that] perform routine tasks that require limited, if any, exercise of judgment," the petitioner claims that the proffered position involves "the exercise of discretion and independent judgment." The petitioner also described the duties of the proffered position as "more complex" than those associated with a typical paralegal position. Moreover, employees in Level I positions "work under close supervision," and "[t]heir work is closely monitored and reviewed for accuracy"; however, the petitioner has indicated that "[t]here is no room for error on the part of [the beneficiary]." The petitioner further indicated that "[a] lack of understanding or poor exercise of judgment [on the part of the beneficiary] . . . can be very damaging to the clients' interests." The petitioner appears to indicate that it will be relying heavily on the accuracy of the beneficiary's work product, as opposed

to "closely monitor[ing] and review[ing] [it] for accuracy," as would be appropriate for a Level I position.

Thus, upon review of the assertions regarding the proffered position, the AAO must question the level of complexity, independent judgment and understanding actually required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described by the petitioner 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, the selected 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.

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).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation . . . and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

A review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations.<sup>4</sup> As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial, the petition could still not be approved for this reason.

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.

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.

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<sup>4</sup> Fundamentally, it appears that (1) the petitioner previously claimed to DOL that the proffered position is a Level I, entry-level position; and (2) the petitioner is now claiming to USCIS that the position is a higher-level and more complex position in order to support its claim that the position qualifies as a specialty occupation. The petitioner cannot have it both ways. Either the position is more senior and complex (based on a comparison of the employer's job requirements to the standard occupational requirements) or it is an entry-level position.

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.

(b)(6)

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), 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 at 147 (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To ascertain whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The petitioner stated that the beneficiary would be employed in a paralegal position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>5</sup> As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Paralegals and Legal Assistants."

The AAO reviewed the chapter of the *Handbook* entitled "Paralegals and Legal Assistants," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Paralegals and Legal Assistants" 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.

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<sup>5</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

The subchapter of the *Handbook* entitled "How to Become a Paralegal or Legal Assistant" states, in part, the following about this occupation:

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

### **Education**

There are several paths to become a paralegal. Candidates can enroll in a community college paralegal program to earn an associate's degree. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Those who already have a bachelor's degree in another subject can earn a certificate in paralegal studies. Finally, some employers hire entry-level paralegals without any experience or education in paralegal studies and train them on the job, though these jobs typically require a bachelor's degree.

Associate's and bachelor's degree programs in paralegal studies usually combine paralegal training, such as courses in legal research and the legal applications of computers, with other academic subjects. Most certificate programs provide this intensive paralegal training for people who already hold college degrees. Some certificate programs only take a few months to complete.

More than 1,000 colleges and universities offer formal paralegal training programs. However, only about 270 paralegal programs are approved by the American Bar Association (ABA).

Many paralegal training programs also offer an internship, in which students gain practical experience by working for several months in a private law firm, the office of a public defender or attorney general, a corporate legal department, a legal aid organization, or a government agency. Internship experience helps students improve their technical skills and can enhance their employment prospects.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Paralegals and Legal Assistants, <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-4> (last visited September 27, 2013).

The AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates that the proffered position is a low-level, entry position relative to others within the occupation. The wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required

tasks and expected results. As previously mentioned, DOL guidance indicates that 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.

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 occupation. Rather, the *Handbook* states that most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. The narrative of the *Handbook* indicates that there are several educational paths to become a paralegal, including obtaining an associate, baccalaureate or master's degree in paralegal studies, as well as earning a certificate in paralegal studies (for those who already have a bachelor's degree in another subject). For entry into the occupation, the *Handbook* indicates that some employers hire paralegals without any experience or education in paralegal studies and train them on the job. The *Handbook* states that these jobs typically require a bachelor's degree. The *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent.

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

Next, the AAO will review the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously 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 the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement.

(b)(6)

In support of the petitioner's assertion that the proffered position qualifies as a specialty occupation position, the record of proceeding contains several job announcements and opinion letters. However, upon review of the evidence, the AAO finds that the petitioner's reliance on the job announcements and opinion letters is misplaced.

In the Form I-129 and supporting documents, the petitioner stated it is a law firm with 895 employees established in 1850. The petitioner reported its gross annual income as more than \$150 million, and declined to provide its net annual income. No explanation for the omission of required information was provided. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541110 - "Offices of Lawyers."<sup>6</sup> The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises offices of legal practitioners known as lawyers or attorneys (i.e., counselors-at-law) primarily engaged in the practice of law. Establishments in this industry may provide expertise in a range or in specific areas of law, such as criminal law, corporate law, family and estate law, patent law, real estate law, or tax law.

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 541110 – Offices of Lawyers, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited September 27, 2013).

The AAO notes that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions* among *similar organizations* (emphasis added)." For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation regarding other organizations 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 the organization share the same general characteristics, such factors may include 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 that 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO reviewed the job advertisements submitted by the petitioner. Notably, the petitioner did not provide any independent evidence of how representative these job advertisements are of the

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<sup>6</sup> NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited September 27, 2013).

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.

The AAO observes that none of the job advertisements provided by the petitioner indicate that a *bachelor's degree in a specific specialty*, or its equivalent, is required. Specifically, the petitioner provided a selection of job advertisements for paralegal positions that contain statements such as "bachelor's degree required," "BA/BS required," "4 year degree and 5 years of relevant experience are required," "college degree needed," "[i]deal candidate will have . . . [a] B.A.," " "[b]achelor's degree is a must," "4 year degree [required]." However, none of these statements indicate that a bachelor's degree in any particular specialty is required. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

As previously mentioned, to demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree 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 139, 147 (1st Cir. 2007).<sup>7</sup>

Notably, some of the advertisements contain insufficient information regarding the advertising organizations such that the AAO can conduct a legitimate comparison of the organizations to the petitioner. For instance, the petitioner submitted announcements posted by staffing agencies, which lack sufficient information regarding the actual employer, as well as advertisements by employers that are devoid of sufficient information regarding the employers to conduct a legitimate

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<sup>7</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

comparison regarding the organizations. Further, 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 these advertising organizations.

In addition, the AAO observes that many of the advertised positions do not appear to be parallel to the proffered position. Specifically, although the petitioner has designated the proffered position as a Level I position, indicating that it is an entry-level position, it has provided several job announcements for positions requiring extensive experience. For example, the advertisement from Vaco Staffing requires a degree and "10+ years of experience as a [p]aralegal." The posting from DW Legal requires a degree and "at least 5 years of relevant experience." The posting from Clearly Gottlieb requires written and verbal fluency in Spanish. The posting from Providus requires a degree and "a minimum of 7 years' experience in corporate transactional law." Thus, it appears that many of the advertisements provided by the petitioner are for more experienced positions than then proffered position, and, without further information, do not appear to be "parallel" positions. Moreover, the advertisements contain limited information regarding the paralegal positions. The petitioner has failed to supplement the record of proceeding to establish that the duties and responsibilities of the advertised positions are the same or parallel to the proffered position.

The AAO observes that even if all of the job postings indicated that a requirement of bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.<sup>8</sup> 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").

Thus, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent, for organizations that are similar to the petitioner, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty (or its equivalent) for entry into the occupation in the United States.

In addition to the job advertisements, the petitioner submitted several opinion letters in support of the instant petition. As a preliminary matter, the AAO notes that the term "recognized authority"

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<sup>8</sup> According to the *Handbook's* detailed statistics on paralegals and legal assistants, there were approximately 256,000 persons employed as paralegals and legal assistants in 2010. *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-6> (last accessed September 27, 2013).

means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

The first opinion letter is from Mr. [REDACTED] coordinator of the Paralegal Education program at [REDACTED]. Mr. [REDACTED] states that a "baccalaureate degree is rapidly becoming a requirement for any person in the [paralegal] field who is working beyond the entry level position." The AAO notes that although Mr. [REDACTED] indicates his belief that a bachelor's degree is "becoming a requirement," he does not indicate that it is *currently* a requirement for entry into the occupation. Further, Mr. [REDACTED] states that such a potential future requirement applies to positions "beyond the entry level." Mr. [REDACTED] indicates that he has reviewed the duties of the proffered position, and that "a person without a baccalaureate degree would be unable to meet the responsibilities set forth therein." However, it appears that Mr. [REDACTED] was not informed that the petitioner designated the position as a Level I entry level position on the LCA. As Mr. [REDACTED] has indicated a future requirement for bachelor's degrees for positions "beyond the entry level," it seems that he would have found the petitioner's characterization of the proffered position as an entry level position to be relevant information for his analysis. Moreover, without this information, the petitioner has not demonstrated that Mr. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon the job duties and responsibilities.

The second letter is from Mr. [REDACTED] professor of law at [REDACTED] School of Law. Based on his expertise in "bankruptcy and related creditors' rights practice" and "ethical rules on law office management and non-professional supervision," along with his review of the description of the proffered position and a letter from the petitioner, Mr. [REDACTED] opines that "a bachelor's degree is a necessary qualification" for the proffered position. Mr. [REDACTED] states that "[c]ritical components of [the proffered] position are extremely specialized and complex (even for a lawyer)," and describes the proffered position as a "super paralegal." Thus, it appears that Mr. [REDACTED] is also unaware that the petitioner designated the proffered position as a Level I entry level position. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. The petitioner's designation of the position under this wage level signifies that the beneficiary will be expected to work under close supervision and receive specific instructions on required tasks and expected results. Additionally, the beneficiary will be expected to perform routine tasks that require limited, if any exercise of judgment. Moreover, the beneficiary's work will be closely monitored and reviewed for accuracy. It appears that Mr. [REDACTED] would have found this information relevant for the opinion letter.

The third letter is from Mr. [REDACTED], professor emeritus of finance at the University of [REDACTED]. He indicates that he is a financial economist. A summary of Mr. [REDACTED] experience indicates that he retired from the University of [REDACTED] approximately a decade prior to the

submission of the H-1B petition.<sup>9</sup> He states that he participates in executive education programs for banking and financial services. Mr. [REDACTED] also reports that he has served as a consultant to law firms on finance and financial services matters. However, based upon a complete review of the information, Mr. [REDACTED] has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. That is, without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* of law firms similar to the petitioner for *paralegal* positions (or parallel positions). Mr. [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.

The fourth letter is from Mr. [REDACTED] senior vice president, director of legal services for [REDACTED]. Mr. [REDACTED] states that based on his knowledge and experience, he finds that the proffered position "requires an individual with the minimum of a Bachelor's degree in Finance, Public Administration, or a closely related field." Further, Mr. [REDACTED] states that a "Bachelor's degree is the typical degree requirement in the legal field for parallel positions among similar size law firms." In addition, Mr. [REDACTED] opines that "most firms of [the petitioner's] size and caliber only employ and recruit degreed professional paralegals." Mr. [REDACTED]'s statements suggest that he not familiar with the petitioner's hiring practices as the petitioner indicated that it *does not only* employ and recruit degreed paralegals. Notably, in its appeal brief dated January 17, 2013, the petitioner stated that "the firm has not adopted across-the-board minimum job requirements for its paralegal positions."

The fifth letter is from Ms. [REDACTED] an attorney with [REDACTED]. Ms. [REDACTED] states that "[a]t [REDACTED] as at other large law firms, **not all** paralegals have responsibilities that require a Bachelor's degree (emphasis added)." Based on her review of the petitioner's letter dated May 5, 2012, Ms. [REDACTED] opines that "the [duties of the proffered position] require a significant degree of specialized knowledge and would not be appropriately assigned to a paralegal with an Associate's degree or a Bachelor's degree in areas other than Finance, Public Administration, or closely related fields." It appears that Ms. [REDACTED] is not aware that the petitioner designated the proffered position as a Level I (entry level) position, which is the lowest possible level at which an employer may designate a particular position. Further, Ms. [REDACTED] indicates that not all paralegal duties require a bachelor's degree, but fails to adequately explain her conclusion regarding the academic requirements for the proffered position.

Finally, the sixth letter is from Mr. [REDACTED]. Mr. [REDACTED] states that his law firm "requires all bankruptcy paralegals to have successfully completed and received (1) a Certificate of Completion from an ABA approved paralegal program, and (2) a Bachelor's Degree." Mr. [REDACTED] provides no position description for the bankruptcy paralegals at his firm such that the AAO can determine if the positions he references are parallel to the proffered position, nor does he provide any information regarding his firm such that the AAO may ascertain if his organization is parallel to the petitioner. Without such information, his statements do not establish that a

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<sup>9</sup> Mr. [REDACTED]'s resume indicates that his research activities, publications, and presentations were mostly from the 1970's to the 1990's, although he was involved in a few endeavors in the early 2000's.

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 parallel to the proffered position, and located in organizations that are similar to the petitioner.

Upon review of the opinion letters, there is no indication that any of the writers possess any knowledge of the petitioner's proffered position and its business operations beyond the information provided in the petitioner's May 5, 2012 letter. There is no evidence that any of the writers have visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. They do not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise.

Notably, it does not appear that any of the writers are aware that the petitioner designated the proffered position as a Level I (entry) position in the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. The petitioner's designation of the position under this wage level signifies that the beneficiary will be expected to work under close supervision and receive specific instructions on required tasks and expected results. Additionally, the beneficiary will be expected to perform routine tasks that require limited, if any exercise of judgment. Moreover, the beneficiary's work will be closely monitored and reviewed for accuracy. It appears that the writers would have found this information relevant. Moreover, without this information, the petitioner has not demonstrated that the writers possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

Furthermore, the AAO notes that, while some of the writers may, in fact, be recognized authorities on various topics, none has provided sufficient information regarding the basis of their claimed expertise on this particular issue. Neither their self-endorsement nor their resumes establish their expertise pertinent to the recruiting and hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how their education, training, skills or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* of law firms similar to the petitioner for paralegal positions (or parallel positions).

Moreover, there is no indication that any of the writers have published any work or conducted any research or studies pertinent to the educational requirements for paralegals in similar organizations, and no indication of recognition by professional organizations that they are an authority on those specific requirements. The opinion letters contain no evidence that they were based on scholarly research conducted by any of the writers in the specific area upon which they are opining. In reaching their conclusions, they provide no documentary support for their assertions regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). They assert a general industry educational standard for organizations similar to the petitioner, without referencing supporting authorities or an empirical

basis for the pronouncements. Notably, they failed to provide the basis for their conclusions supported by copies or citations of any research material used.

The AAO may, in its discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letters 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 letters into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, based upon a complete review of the record of proceeding, 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 to the petitioner's industry in positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO acknowledges that the petitioner believes that the proffered position qualifies as specialty occupation under this criterion of the regulations. Specifically, in its appeal brief dated January 17, 2013, the petitioner stated that the "[proffered position] is so complex and unique that it can be performed only by an individual with at least a bachelor's degree in Finance, Public Administration, or a closely related field." In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including a 77-page manual entitled "Bankruptcy BASICS" and the opinion letters discussed above. The AAO reviewed the record of proceeding in its entirety. However, upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Additionally, the AAO finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition, which indicates a Level I (entry level) wage. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV

(fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>10</sup>

The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position. Specifically, the petitioner fails to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The AAO observes that the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The AAO notes that the petitioner provided a description of the "knowledge required" to perform the duties of the proffered position. However, the petitioner failed to establish that such knowledge is typically obtained in a bachelor's degree program in a specific specialty, or its equivalent. Further, the AAO reviewed the beneficiary's foreign transcript (found to be equivalent to a bachelor's and master's degree in public administration by World Education Services). The AAO notes that it is not apparent in which of these courses the beneficiary would have learned to perform duties such as draft UCC filings and Fair Foreclosure Act letters, file mortgages and collateral assignments in state and county filing offices, or draft discovery requests pursuant to state and federal rules. Nor is it apparent in which course the beneficiary would have obtained an "[i]n-depth knowledge of the [U.S.] Bankruptcy Code and associated rules for filing bankruptcy pleadings with the Court; detailed knowledge of the electronic filing system as it relates to Bankruptcy Court matters; [and] specific knowledge of the Bankruptcy Court rules regarding the service of pleadings." The petitioner has not established how its stated educational requirements for the proffered position directly relate to the "knowledge required" to perform the duties of the proffered position, as described by the petitioner. Further, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent, such as an individual with a paralegal certificate and on-the-job training.

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<sup>10</sup> For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

The AAO notes that on appeal, the petitioner asserts that "[t]he AAO has approved numerous H-1B petitions for paralegal positions where it has found that the specific duties exceeded the occupational scope of those typically performed by paralegals and were so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree of higher." In support of this assertion, the petitioner provided copies of several non-precedent AAO decisions. The AAO agrees that there are many instances where, on appeal, positions are found to be so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree of higher. However, in the instant case, the petitioner has not provided sufficient evidence to establish that the particular position proffered in this matter qualifies as a specialty occupation under the applicable statutory and regulatory provisions. To the extent that the petitioner suggests that the non-precedent cases are relevant to the instant petition, the AAO notes that the petitioner has not established that the underlying facts of these cases are analogous to the instant petition.<sup>11</sup> For example, the record of proceeding does not contain sufficient information regarding the day-to-day duties, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received within the context of the employers' business operations to make a legitimate comparison of those positions to the proffered position.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and prior work experience with the petitioner will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates

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<sup>11</sup> When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Any suggestion that USCIS must possibly request and review each case file relevant to unpublished decisions submitted by the petitioner, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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. *See id.* at 388.

On appeal, the petitioner indicates that it employs 49 paralegals across 12 offices, 9 of whom are assigned to the "Finance, Bankruptcy, and Real Estate (FIBRE) practice." The petitioner further reports that it does not have "across-the-board minimum job requirements for its paralegal positions." The petitioner asserts that the proffered position is unique from its other paralegal positions. The petitioner continues by claiming that due to the "unique and advanced level of knowledge required to perform duties in each of these areas, [the petitioner] has adopted a policy to require a bachelor's degree in a specific closely related field for this particular position."

The petitioner stated in the Form I-129 petition that it has 895 employees and was established in 1850 (approximately 160+ years prior to the submission of the H-1B petition). The petitioner did not state the total number of people it has employed in the proffered position. Notably, the petitioner also did not provide probative evidence regarding its hiring practices for its paralegal positions, including this particular position (which it claims is unique). Without further evidence, the petitioner's statements are not persuasive in establishing that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The AAO acknowledges that the petitioner believes that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO reviewed the documentation submitted by the petitioner (including a 77-page manual entitled "Bankruptcy BASICS" and the opinion letters discussed above, as well as all of the other evidence provided) but finds that it fails to establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

The AAO notes that on appeal the petitioner attempts to distinguish the proffered position as more specialized and complex than other paralegal positions within its organization. The petitioner provided the following explanation regarding the complexity of the proffered position:

[The petitioner] employs 49 paralegals in varying practice areas at 12 office locations throughout the U.S. Because each of the firm's practice areas has its own level of complexity and specialization, the firm has not adopted across-the-board minimum job requirements for its paralegal positions. Rather, each paralegal position is considered on its own merits and the job requirements are based on the levels of knowledge and skills required to successfully perform the job duties. Specifically, the requirements are typically dependent upon the field of specialization, the specific job duties, and the position's hierarchy within the firm. [The petitioner] currently has nine (9) paralegals within its [redacted] practice group, the practice group that the [proffered position] falls within. The [proffered position] is a uniquely complex position within the firm. Each of [the petitioner's]

eight other paralegals in the [redacted] group with perform job duties that support transactional work **or** perform job duties that support litigation. The [proffered position] is uniquely complex in that the position is the only paralegal position within the firm's [redacted] practice group responsible for supporting **both** transactional work and litigation. Due to the unique and advanced level of knowledge required to perform duties in each of these areas, [the petitioner] has adopted a policy to require a bachelor's degree in a specific closely related field for this particular position.

The petitioner appears to indicate that it does not require a bachelor's degree in a specific specialty for [redacted] group paralegals that solely support transactional work, nor does it require a bachelor's degree for positions that solely support litigation. The petitioner has not sufficiently explained why a bachelor's degree is *not* required to perform *either* transactional support **or** litigation support, but **is** required to perform *both* of these functions. The petitioner has not established that the specific tasks assigned to the other paralegal positions in the [redacted] group, for which the petitioner does not require a bachelor's degree in a specific specialty or its equivalent, are significantly different than those assigned to the proffered position.

Furthermore, the AAO reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category of "Paralegals and Legal Assistants," and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 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 observes that the instant petition seeks to extend the beneficiary's H-1B employment with the petitioner, and notes that the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r

1988).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.