



U.S. Citizenship
and Immigration
Services

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DATE: OCT 08 2013

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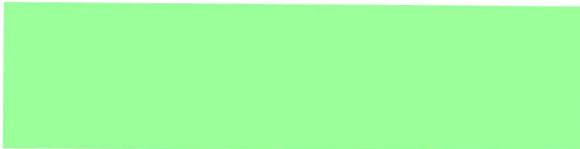
IN RE:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on February 28, 2011. In the Form I-129 visa petition, the petitioner describes itself as a private school established in 2005. In order to employ the beneficiary in what it designates as a kindergarten teacher position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on August 3, 2011, finding that the petitioner (1) failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions, and (2) failed to establish that the beneficiary is qualified to perform services in a specialty occupation position. The petitioner filed two motions with the service center prior to filing the instant appeal. On appeal, counsel asserts that the director's bases for denial of the petition were erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision dated August 3, 2011; (5) the petitioner's September 2, 2011 motion to reopen and supporting documents; (6) the notice of decision dated November 21, 2011; (7) the petitioner's December 21, 2011 joint motion to reopen and reconsider, and supporting documents; (8) the notice of decision dated September 14, 2012; and (9) the Form I-290B and supporting materials for the instant appeal. The AAO reviewed the record in its entirety before issuing its decision.

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

In the Form I-129 petition and supporting documents, the petitioner stated that it would employ the beneficiary as a kindergarten teacher. With the petition, the petitioner submitted a letter dated January 27, 2011, which included a description of the duties of the proffered position. Specifically, the petitioner stated that the beneficiary would perform the following duties:

- Managing classroom by applying knowledge and experience in child growth and development; child health, safety and nutrition; child psychology; differences and diversity of learning; educational games for Kindergarten-age children;
- Teaching phonics, letter recognition, writing, arithmetic, art, and music to build an awareness of literary, artistic, scientific or mathematical concepts in our surroundings to Kindergarten students through the use of the Montessori Method, as well as knowledge of educational technology and instructional resources;

- Delivering daily instruction in language, mathematics, writing, reading, art and music by applying knowledge of Educational Psychology;
- Integrating Montessori Method curricular activities into classes, including computer-based lessons, cooperative learning, games and exploration activities.
Designing curriculum and effective class rationale;
- Developing alternative measures of assessment, such as problem-based learning projects and games;
- Designing, administering, and grading tests that reflect the Montessori Method;
- Documenting educational results and actions by maintaining student reports, logs, and records;
- Participating in the training of fellow Montessori teachers;
- Tutoring students after school, as needed; and
- Attending parent/teacher interviews; updating job knowledge by participating in educational opportunities; reading professional publications; maintaining personal networks; and participating in professional organizations.

In its January 27, 2011 letter of support, the petitioner stated the minimum educational requirement for the proffered position as "a Bachelor's Degree in Education, Early Childhood Education, or a related field." The petitioner noted that the "position does not require licensure, as [the petitioner is] a private school." The petitioner identified itself as "a private Montessori school," and noted that, as such, it does not require "any credential or licensure" for the proffered position.

The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of her Montessori training, her foreign education, and her professional experience. The petitioner provided the following information regarding the beneficiary's academic credentials: (1) a copy of the beneficiary's "Associate Early Childhood Credential" from [REDACTED]; and (2) a copy of the beneficiary's foreign diploma from the Pre-School [REDACTED]. The AAO observes that the transcript regarding the beneficiary's "Associate Early Childhood Credential" states "student was enrolled for summer only (academic portion)." The transcript specifies the summer program to have been from June 28, 2004 to August 20, 2004. In addition, the transcript states that the "educational level at admission: high school graduation verified by transcript." The beneficiary's diploma from the [REDACTED] indicates that she attended classes from February 1977 to June 1978. The petitioner did not provide the beneficiary's academic transcript from the [REDACTED].

In addition, the petitioner provided three letters regarding the beneficiary's prior employment and volunteer work. The letters indicate that the beneficiary (1) served as a teacher "on a part time basis in 1979 and left since she was going abroad"; (2) was a directress from January 1993 to April 1999; and (3) was a volunteer teacher for three months in 2004.

The petitioner also submitted an evaluation of the beneficiary's credentials prepared by [REDACTED] which initially states that "[the beneficiary's] combined studies and experience are equivalent to an Accredited American Bachelor's degree in Early Childhood Education awarded

by an Accredited Institution of Higher Education in the United States." Thereafter, in the same letter, the evaluator concludes that "[t]he education of [the beneficiary] based on certificates and transcripts is equivalent to an Accredited American Bachelor of Science in Early Childhood Education Degree. This educational program is equivalent to a total of One Hundred Thirty American Accredited university credits." No explanation was provided for initially stating that the evaluation was based upon the beneficiary's academic credentials and experience, and thereafter claiming that the evaluation was based only upon the beneficiary's education.¹

The petitioner also 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 of "Kindergarten Teachers, Except Special Education" – SOC (ONET/OES Code) 25-2012 at a Level I (entry level) wage.²

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 5, 2011. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The petitioner further advised the petitioner that the evidence of record was insufficient to establish that the beneficiary is qualified to perform services in a specialty occupation position. The director advised the petitioner that public records reflect that the petitioner provides preschool instruction and infant care. The director outlined the specific evidence to be submitted. The AAO observes that the director provided over three pages of specific guidance to the petitioner regarding the necessary evidence to establish that the beneficiary has attained the equivalent of a U.S. bachelor's degree.³

¹ Moreover, the AAO observes that the documentation provided to USCIS regarding the beneficiary's credentials is insufficient to support the evaluator's conclusion.

² The wage levels are defined in the U.S. Department of Labor's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described 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 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/Policy_Nonag_Progs.pdf.

³ The director specifically advised the petitioner that "[a] private educational credentials evaluation service may not evaluate an alien's work experience or training because regulations limit the scope of educational evaluators to evaluating only foreign education (emphasis in the original)."

On June 28, 2011, the petitioner responded to the RFE by submitting a letter and additional evidence. Specifically, the petitioner submitted (1) several job postings; (2) a letter from [REDACTED] Assistant Director of [REDACTED] (3) an excerpt from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding the occupational category "Teachers-Kindergarten, Elementary, Middle, and Secondary"; (4) a copy of the O*NET OnLine Summary Report for the occupation "25-2012.00 – Kindergarten Teachers, Except Special Education"; (5) an evaluation of the beneficiary's credentials (education, training and experience) prepared by [REDACTED] (6) a transcript regarding the beneficiary's "Associate Early Childhood Credential," which indicates that "[the beneficiary] was enrolled for summer only (academic portion) [June 28, 2004 to August 20, 2004]; re-enrolled for 2005-2006 practicum [September 2005 to June 2006]";⁴ (6) a revised letter from the beneficiary's former employer regarding her employment from 01/03/1993 to 04/30/1999; (7) copies of pay statements from the beneficiary's prior employer; and (7) copies of previously submitted evidence.

The AAO observes that although the director specifically notified the petitioner in the RFE that "[a] private educational credentials evaluation service may not evaluate an alien's work experience or training," the petitioner elected to submit an evaluation of the beneficiary's credentials from [REDACTED] a private educational credential evaluation service. The AAO further observes that the evaluation submitted by the petitioner basis its findings of educational equivalency on the beneficiary's "professional experience in the field of early childhood education," as well as her Montessori training.

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 also found that the petitioner had failed to establish that the beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions. The director denied the petition on August 3, 2011.

On September 2, 2011, counsel for the petitioner submitted a motion to reopen to the service center director. In support of the motion, counsel submitted a brief and additional evidence, including: (1) a copy of the petitioner's State of California license to operate a day care center; (2) a letter from [REDACTED] and (3) copies of previously submitted documents. The director determined that the evidence did not overcome the grounds of the denial.

On December 21, 2011, counsel submitted a joint motion to reopen and reconsider the director's decision. The submission included a letter from the petitioner dated December 13, 2011. In the letter, the petitioner stated, "I prefer BA qualified teachers for my kindergarten classes." The AAO

⁴ The new transcript is dated December 15, 2006, thus it was previously available. However, no explanation was provided for failing to provide this transcript to USCIS with the initial petition.

notes that obviously a preference for a degree is not an indication that a degree is required for the position. Thus, based upon the petitioner's statement, the proffered position does not qualify as an H-1B specialty occupation.

Moreover, the statement that the petitioner prefers "BA qualified teachers" is insufficient to establish that the proffered position qualifies as a specialty occupation. That is, the petitioner does not indicate that an individual must possess a baccalaureate in a *specific specialty* (or its equivalent) to serve in the proffered position. An entry requirement of at least a bachelor's degree without any specialization is inadequate to establish that a position qualifies as a specialty occupation position. 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, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The motion also included a brief from counsel, along with the following documents: (1) a one-page document referred to by counsel as a "curriculum of the Petitioner's Kindergarten program"; (2) copies of two academic transcripts, which the petitioner claims are in the names of its other employees;⁵ and (3) copies of previously submitted documents. On September 14, 2011, the director dismissed the petitioner's joint motion.

Thereafter, counsel for the petitioner submitted the instant appeal of the denial of the H-1B petition. In support of its Form I-290B, counsel submitted a brief and additional documentation. Specifically, the appeal included the following documents: (1) photos of the petitioner's locale and of the beneficiary; (2) printouts from [REDACTED] (3) letters from the beneficiary's prior employers; (4) a copy of a non-precedent AAO decision; and (5) copies of previously submitted documents.

The AAO will now address the director's first 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.

⁵ The petitioner's owner states, "Teachers that I have assigned to this class have been Ms. [REDACTED] Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] all of whom hold a BA degree in Early Childhood Education." The petitioner only submitted transcripts for two of the individuals: Ms. [REDACTED] and Ms. [REDACTED]. Notably, the transcript for [REDACTED] does not indicate that a degree was awarded. The documentation does not verify the petitioner's assertion as it fails to establish the claimed academic qualifications for all of the individuals other than Ms. [REDACTED].

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.

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

The petitioner stated that the beneficiary would be employed in a kindergarten teacher 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 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 observes that in a letter dated December 13, 2011, the petitioner states that "[i]n California there are many different types of Preschools, and the Montessori method is just one type." Thus, the petitioner appears to represent that its business is a preschool. Later in the letter, the petitioner states that "it is a privately owned Elementary and Preschool [established] in 2005, and is licensed to serve 87 preschool children ages 2 until entry into the First grade including kindergarten."⁶ The petitioner

⁶ The AAO observes that although the petitioner has represented that it is an "Elementary and Preschool," the

provided the names and dates of birth of seven individuals and claims that they are in the "Kindergarten class." The petitioner also provided a one-page document that counsel describes as the "curriculum of the Petitioner's Kindergarten program." Counsel contends that the petitioner's State of California license to operate a "day care center" is evidence that the petitioner operates a kindergarten because the document grants a license for the petitioner "to serve (87) preschool children ages 2 until entry into the first grade."

The AAO observes the petitioner's "day care center" license "to serve (87) preschool children ages 2 until entry into the first grade" is not probative evidence that the petitioner in fact operates a kindergarten. The AAO notes that mandatory elementary education in the State of California commences at age six. *See* Cal. Educ. Code § 48200 (West 2013). In the State of California, private schools are not required to comply with the kindergarten admission dates for public schools, the curriculum, or the State Board of Education approved content standards that are followed by public local educational agencies. Thus, it appears that the petitioner's claimed distinction between "preschool" and "kindergarten" classes is entirely self-defined. Although the petitioner provided a generalized one-page, ten-month "curriculum" for its kindergarten class, the petitioner has not established how the kindergarten "curriculum" is distinct from its preschool curriculum. Further, the petitioner provided photos which are described by counsel as depicting "the curriculum primarily taught to the kindergarten age students." The pictures show instruction to more than seven children (the number of children the petitioner claims is in its kindergarten class). The AAO observes that the claim that this curriculum is taught "*primarily to kindergarten age students*" suggests a lack of clarity between the kindergarten curriculum and other preschool instruction. No further explanation was provided. In addition, the AAO notes that the petitioner's claim that it serves seven "kindergarten age" students is not probative as to whether the petitioner provides kindergarten instruction that is distinguishable from preschool instruction or day care activities.

On appeal, counsel provided Internet printouts from [REDACTED] and [REDACTED] both of which contain a listing for the petitioner as [REDACTED]. However, the website for the petitioner that appears in the [REDACTED] listing, specifically [REDACTED] does not appear to advertise kindergarten services. Notably, the petitioner's own website identifies itself as a "Preschool and Infant Center." The website does not include kindergarten class availability. Rather, the petitioner's website indicates that it *prepares* children for kindergarten, stating "Your child is also engaged in learning the critical fundamental foundations of academic preparation that is now required for kindergarten. The preparation we provide is truly excellent." *See* [REDACTED] available on the Internet at [REDACTED] (last visited September 30, 2013). The petitioner has not adequately explained why it does not advertise a kindergarten program if it in fact offers this service.

petitioner has provided no evidence that it has filed an affidavit or statement with the California Department of Education (Superintendent of Public Instruction), as required by California Education Code section 33490 for "[e]very person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level."

Upon review of the petitioner's description of the proffered position, and in light of the discrepancies in the record with respect to the type of services provided by the petitioner, and the lack of probative evidence demonstrating that the petitioner provides kindergarten-level academic instruction, the AAO finds that the record reflects that the proffered position is not a kindergarten teacher position. Based upon a complete review of the record of proceeding, the proffered position appears to fall under the occupational category "Preschool Teachers."

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷ The AAO reviewed the chapter of the *Handbook* entitled "Preschool Teachers," including the sections regarding the typical duties and requirements for this occupational category.⁸ However, the *Handbook* does not indicate that "Preschool Teachers" comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

The subchapter of the *Handbook* entitled "What Preschool Teachers Do" states the following about this occupation:

Preschool teachers educate and care for children, usually ages 3 to 5, who have not yet entered kindergarten. They explain reading, writing, science, and other subjects in a way that young children can understand.

Duties

Preschool teachers typically do the following:

- Prepare children for kindergarten by introducing concepts they will explore further in kindergarten and elementary school
- Work with children in groups or one on one, depending on the needs of children and the subject matter
- Plan and carry out a curriculum that targets different areas of child development, such as language, motor, and social skills
- Organize activities so children can learn about the world, explore interests, and develop talents
- Develop schedules and routines to ensure children have enough physical activity, rest, and playtime
- Watch for signs of emotional or developmental problems in children and bring problems to the attention of parents

⁷ 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/>.

⁸ For additional information on the occupational category "Preschool Teachers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool Teachers, on the Internet at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-1> (last visited September 30, 2013).

- Keep records of the students' progress, routines, and interests, and keep parents informed about their child's development

Preschool teachers use play to teach children about the world. For example, they use storytelling and rhyming games to teach language and vocabulary. They may help improve children's social skills by having them work together to build a neighborhood in a sandbox or teach science and math by having children count when building with blocks.

Preschool teachers work with children from different ethnic, racial, and religious backgrounds. Teachers may include multicultural topics in their lessons to teach children about people of different backgrounds and cultures.

The duties of the proffered position as described by the petitioner appear to be encompassed by the typical duties of preschool teachers as stated in the *Handbook*.

The subchapter of the *Handbook* entitled "How to Become a Preschool Teacher" states, in pertinent part, the following about this occupation:

Education and training requirements vary based on settings and state regulations. They range from a high school diploma and certification to a college degree.

Education

In childcare centers, preschool teachers generally are required to have at least a high school diploma and a certification in early childhood education. However, employers may prefer to hire workers with at least some postsecondary education in early childhood education.

Preschool teachers in Head Start programs must have at least an associate's degree. However, by 2013, at least 50 percent of preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field. As a result, Head Start programs may prefer to hire workers with a bachelor's degree. Those with a degree in a related field must have experience teaching preschool-age children.

In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

Certification

Some states and employers require preschool teachers to have a nationally recognized certification such as the Child Development Associate (CDA) offered by the Council for Professional Recognition. Requirements to earn the CDA include a high school diploma, experience in the field, and coursework.

Some states recognize the Child Care Professional (CCP) designation offered by the National Early Childhood Program Accreditation. Requirements to earn the CCP include a high school diploma, experience in the field, and continuing education courses.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool Teachers, on the Internet at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4> (last visited September 30, 2013).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that although there is a range of acceptable credentials, most preschool teachers are required to have a high school diploma. The *Handbook* further indicates that some employers prefer to hire workers with some postsecondary education in early childhood education. The *Handbook* does not indicate that "some postsecondary education" is a baccalaureate (or higher degree). Thus, it appears that an associate's degree may be sufficient. Moreover, the AAO notes again that obviously, a preference for a particular level of education does not indicate a requirement for such education.

The *Handbook* discusses the requirements for preschool teachers in Head Start programs and in public schools. The petitioner does not claim, and has not provided any documentation to support a finding, that it has a Head Start program or is a public school. Thus, these paragraphs of the *Handbook* are not relevant to the instant matter.

In its January 27, 2011 letter of support, the petitioner indicated that it utilizes "Montessori-based academic programs," which is a particular method of education requiring specialized Montessori teacher training. The petitioner further indicated in its letter that the beneficiary is qualified to provide services in the proffered position by virtue of her Montessori training and professional experience. Counsel provided a letter from [REDACTED] Ms. [REDACTED] states that "[REDACTED] sets the high professional standards that inform Montessori education as practiced in [REDACTED]-accredited schools and taught in [REDACTED]-affiliated teacher education programs." Ms. [REDACTED] further reports that "[the beneficiary] has received formal Montessori early childhood education from the [REDACTED] an . . . [REDACTED] affiliated Teacher Education Program." Ms. [REDACTED] recites the requirements to receive a Montessori credential, noting that "[t]he total of [the required] contact hours equates to two years of undergraduate study or the equivalent of an Associate degree." Ms. [REDACTED]'s letter lists the [REDACTED] website address as [REDACTED]

The AAO reviewed the portion of the website entitled '[REDACTED]' which states in pertinent part:

Montessori Credentials

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

The following credentials are awarded after graduation from an _____

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

(Emphasis added.) _____ available on the Internet at _____ (last visited September 30, 2013).

The AAO notes that the record contains a copy of the beneficiary's "Associate Early Childhood Credential," awarded by the _____ in December, 2006.⁹ The beneficiary's transcript indicates "educational level at admission: high school graduation verified by transcript."

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm'r 1977). There is no indication that completion of the _____ at the Associate Early Childhood level is the equivalent to a bachelor's degree. Furthermore, the _____ information indicates that a bachelor's degree is not required to obtain an Associate Early Childhood Credential, which is the minimum education requirement for a Montessori teacher of students ages 2.5 to 6. The documentation does not support a finding that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

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

⁹ Moreover, upon review of the _____ website, the AAO notes that its brochure specifically states, "Applicants to the [Early Childhood] program must be at least high school graduates, and completion of a collegiate child development course prior to entry is recommended." The brochure further specifies, "_____ awards full Montessori certification to college graduates and associate credentials to high school graduates." See _____ Informational Brochure, available on the Internet at _____ (last visited September 30, 2013).

specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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

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

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

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

In the Form I-129, the petitioner stated that it is a private school business with 10 employees. In the petition, the petitioner reported its gross annual income as approximately \$1.3 million, and its net annual income as approximately \$1.1 million. The evidence of records reflects that the petitioner is licensed to "operate and maintain a day care center," to "serve (87) preschool children ages 2 until entry into first grade."

For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are 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 advertising 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 an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

The AAO reviewed the job advertisements submitted in support of the H-1B petition. Notably, 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 notes that the petitioner has not established that all of the organizations are similar to the petitioner. For example, there is a lack of information regarding several of the organizations (e.g., private, public/charter, faith based, publicly funded). Moreover, the petitioner has failed to establish that the advertised positions are for jobs parallel to the proffered position. The postings do not contain sufficient information regarding the duties of the advertised positions such that the AAO can ascertain if they are parallel to the proffered position. For instance, there is no information regarding student-teacher ratio and whether the children attend half-day or full-day programs. Additionally, the job postings lack information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, the documentation does not establish that the duties and responsibilities of these positions are the same or parallel to the proffered position. That is, the advertisements provide insufficient information regarding the specific duties of the jobs to ascertain whether the positions are parallel to the proffered position. Notably, the petitioner did not supplement the record of proceeding to establish that the positions are parallel to the proffered position and located in organizations that are similar to the petitioner.

Moreover, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. The AAO notes that some of the job postings requesting a bachelor's degree do not specify a specific specialty. For example, the posting for [REDACTED], and the posting from an undisclosed Florida school state an education requirement of a "Bachelor's degree" or higher. The postings from [REDACTED] and [REDACTED] require a "4 Year Degree." Similarly, the postings from [REDACTED] and [REDACTED] request "BA or BS" without further specification. Thus, some of the advertisements do not indicate that candidates must possess at least a baccalaureate in a *specific specialty*, or its equivalent.

As previously mentioned, an entry requirement of at least a bachelor's degree without any

specialization is inadequate to establish that the advertised positions qualify as specialty occupation positions. 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, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The AAO reviewed all of the advertisements submitted in support of the H-1B petition in the instant case. However, as the documentation does not establish that the petitioner has met this prong of the regulations, 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.

The job advertisements do not 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. Further, it must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty 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 the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.¹⁰

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner and counsel provided two industry letters. In response to the RFE, counsel provided a letter from [REDACTED] Assistant Director at [REDACTED] Ms. [REDACTED] states she is the assistant director of a [REDACTED] Washington. Ms. [REDACTED] "attest[s] to the

¹⁰ According to the *Handbook's* detailed statistics on this occupation, there were approximately 456,800 persons employed as preschool teachers in 2010. *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-6> (last accessed September 30, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the industry. *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 organizations similar to the petitioner in its industry commonly require, for positions parallel to the one here proffered, at least 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 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 for entry into the occupation in the United States.

fact that [her] school requires an individual with at least a bachelor's degree in Education, Early Childhood Education or a related field for the position of Kindergarten Teacher." However, Ms. [REDACTED] did not provide the total number of people currently or in the past who have been employed in the position along with a description of their academic credentials. She did not provide any documentary evidence to support her statements and establish that the school currently or in the past employed individuals in parallel positions to the proffered position.

Moreover, Ms. [REDACTED] failed to provide the job duties and day-to-day responsibilities of the position that she claims is similar to the proffered position. Ms. [REDACTED] did not indicate the specific knowledge and skills required for the position, or provide any information regarding the complexity of the job duties, independent judgment required or the amount of supervision received. As a result, it is not possible to determine if the position is similar to the proffered position.

Moreover, upon review of the letter, the AAO observes that Ms. [REDACTED] has not indicated that she possesses any specific knowledge of the petitioner's business operations and the proffered position. That is, Ms. [REDACTED] does not demonstrate or assert any 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. Ms. [REDACTED] does not provide any basis for her conclusion that "the requirement of the position of a Kindergarten Teacher is common to the similar organizations." She asserts a general industry educational standard for organizations similar to her own, without referencing any supporting authority or any empirical basis for the pronouncement. She did not identify the specific elements of her knowledge and experience that she may have utilized to reach her conclusions. Ms. [REDACTED] did not provide any evidence in support of her opinions regarding the educational requirements for the occupation (e.g. cite studies, surveys, empirical evidence). She has not provided a sufficient factual basis by which one may reasonably conclude that her opinions are well founded and reliable as they are not supported by independent, objective evidence demonstrating the manner in which she reached such conclusions. Further, the AAO observes that the petitioner has not established that Ms. [REDACTED]'s organization is similar to the petitioner.

Thus, the AAO finds that Ms. [REDACTED]'s letter is not probative 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.

The petitioner also submitted a letter from [REDACTED] manager of teacher education services, discussed at length above. The AAO here incorporates its earlier discussion regarding this letter and notes that Ms. [REDACTED]'s organization grants an [REDACTED] Associate Early Childhood Credential, such as that held by the beneficiary, to students who do not hold a bachelor's degree, as described above, and on the [REDACTED] website. See [REDACTED] " [REDACTED] " available on the Internet at [REDACTED] (last visited September 30, 2013).

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*

(b)(6)

Caron International, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts these 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, the petitioner has not established 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. 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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted its State of California license to operate a day care center, a one-page chart of its curriculum, photos of the petitioner's premises and selected lessons, printouts of internet business listings for the petitioner, documents regarding the education of two employees, as well as other documents in support of the petition. 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. That is, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. The petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO again observes that the [REDACTED] issues associate credentials in Early Childhood Education to individuals whose highest academic credential is a high school diploma. See [REDACTED] available on the Internet at [REDACTED] (last visited September 30, 2013). Thus, the [REDACTED] does not indicate that the position of Montessori early childhood education teacher is so complex or unique that it can only be performed by an individual with at least a baccalaureate in a specific specialty, or its equivalent.

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

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

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

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

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

On the Form I-129, the petitioner indicated that it was established in 2005 (approximately 6 years prior to the submission of the H-1B petition) and has 10 employees. In a letter dated December 13, 2011, the petitioner provided the names of seven students that are enrolled in the "kindergarten class." The AAO herein incorporates its prior discussion of the evidence and again notes that although the petitioner may provide service to seven children of "kindergarten age," the petitioner has not established that it provides kindergarten-level academic instruction that is distinguishable from its preschool and child care services.

(b)(6)

The petitioner did not state the total number of people who currently or in the past have served in the proffered position; however, in its letter dated December 13, 2011, the petitioner named four individuals that it claims have served in proffered position. The petitioner asserted that all four hold bachelor's degrees in early childhood education. In support of this assertion, the petitioner provided documentation from the [REDACTED] for two of the individuals: [REDACTED] and [REDACTED]. The transcript in the name of [REDACTED] does not indicate that Ms. [REDACTED] was awarded a degree. The documentation in the name of [REDACTED] indicates that she was awarded a Bachelor of Arts in child development on June 7, 2008. The petitioner did not provide any documentation regarding the other individuals' academic credentials. Moreover, the petitioner did not provide probative evidence establishing that any of the individuals currently or in the past have been employed by the petitioner (e.g., pay statements, wage and tax statements). The AAO notes that documentation that one individual, over a six year period, has a particular degree is not persuasive to establish that the petitioner normally requires such a degree.

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

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

The AAO acknowledges that the petitioner and counsel may believe that the proffered position qualifies as a specialty occupation under this criterion of the regulations. In support of the petition, the petitioner submitted various documents, including a State of California license to operate a day care center, a one-page "curriculum," photos of the petitioner's premises and selected lessons, Internet printouts, letters from individuals in the industry, as well as other documentation regarding the proffered position and its operations.¹¹ The AAO reviewed all of the evidence in the record; however, the documentation does not establish that nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Additionally, the AAO here reiterates its earlier comments and findings with regard to the fact that the [REDACTED] issues associate credentials in Early Childhood Education to individuals who possess a high school diploma and Montessori teacher training. See [REDACTED] available on the Internet at [REDACTED]

¹¹ The AAO hereby incorporates by reference its previous discussion regarding the evidence submitted by the petitioner and counsel, as well as the deficiencies in the record of proceeding for establishing eligibility for the benefit sought.

[REDACTED] (last visited September 30, 2013). Moreover, the evidence does not indicate that completion of such a program is the equivalent of a bachelor's degree in a specific specialty. Further, according to the [REDACTED] the position of Montessori early childhood education teacher does not require at least a bachelor's degree in a specific specialty, or its equivalent. Upon review of the record, the petitioner has failed to establish that the nature of the duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

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

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the evaluation of the beneficiary's credentials submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty.

Specifically, as the claimed equivalency was based in part on experience, there is no evidence that the evaluator had authority to grant college-level credit for training and/or work experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1).

In the instant case, there is no independent evidence in the record from appropriate officials, such as deans or provosts, to establish that either [REDACTED] is, in the language of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), "an official [with] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." The AAO notes that the director's RFE specifically advised the petitioner that "[a] private educational credentials evaluation service may not evaluate an alien's work experience or training because regulations limit the scope of educational evaluators to evaluating only foreign education."

Furthermore, upon review of the beneficiary's employment letters, the AAO finds that the letters provide insufficient information regarding the beneficiary's work history and duties (e.g., complexity of the job duties; the level of judgment; the amount and level of supervision; the level of understanding required to perform the job duties). The letters describe the beneficiary's duties in terms of generalized and generic functions that do not convey the substantive nature of the work that the beneficiary performed. The letters do not present an adequate factual foundation for the evaluators to determine that the beneficiary has the education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and that she has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Thus, the AAO finds that the evaluations fails to establish that the beneficiary's education, training and/or work experience are the equivalent of a bachelor's degree in a specific specialty based upon the information provided. In light of the lack of a sufficient factual foundation discussed above, the evaluations are insufficient even if they had been rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Moreover, when USCIS determines a beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), it must be demonstrated that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the beneficiary has documented recognition of expertise in the specialty. In the instant case, the documentation from the beneficiary's prior employers does not establish that her work experience included the theoretical and practical application of specialized knowledge and that her experience was gained while working with peers, supervisors, or subordinates who have a degree in the specialty occupation, or its equivalent. Additionally, the petitioner did not submit probative documentation establishing that the beneficiary has recognition of expertise in the specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The AAO will now address an additional issue not discussed by the director. In the instant case, the beneficiary submitted a request to a Congressional representative regarding the denial of the H-1B petition. Notably, the regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically states that a beneficiary of a visa petition is not an affected party and does not have any legal standing in a proceeding. No explanation was provided as to the reason the beneficiary submitted the request rather than the petitioner.

Moreover, upon review of the Congressional request, the AAO observes that the beneficiary provided, in part, the following statement:

I got my first work visa in July 2006 & took up my first job offer as a Pre-school teacher in Duarte. The legal fees and filing charges to obtain my initial work visa

(H-1B) in 2006 amounted to \$2893.00 which I paid, having lost \$ 500.00 as a deposit, earlier on to a dubious lawyer in Hacienda, CA.

* * *

I was compelled to quit this job, and seek another employer. . . . Once again I paid \$2690.00 as legal fees & filing charges to my lawyer to obtain a fresh work visa under this new employer. . . . We [the beneficiary and her husband] have spent nearly \$16,000.00 by way of legal fees and visas so far.

* * *

In Aug. 2008, I got my H-1B visa for 3 years, paying once again an enormous sum of money towards it. . . . The Director subsequently terminated me, in January 2011. I have since, been trying to reapply all over again for a fresh work visa, where I have paid once again a sum of \$2,800.00 with tremendous difficulty.

The regulation at 20 C.F.R. § 655.731(c)(9), specifies that attorney fees and other costs connected to the performance of H-1B program functions are required to be performed by the employer (e.g., preparation and filing of LCA and H-1B petition). Furthermore, the regulation states that an employer may not receive, and the H-1B nonimmigrant may not pay, any part of the \$750 or \$1,500 additional filing fee, whether directly or indirectly, voluntarily or involuntarily. According to the Act, it is a violation for an employer to require a beneficiary to reimburse, or otherwise compensate, the employer for part or all of the cost of the American Competitiveness and Workforce Improvement Act (ACWIA) fee. *See* 212(n)(2)(C)(vi)(II) of the Act; *see also* 20 C.F.R. § 655.731(c)(10)(ii). Notably, the Act also states that "the Secretary of Homeland Security shall impose a fraud prevention and detection fee *on an employer filing a petition.*" *See* 214(c)(12)(A) of the Act (emphasis added).

The regulations at 20 C.F.R. § 655.731(c)(11) and (12) state that "[a]ny unauthorized deduction taken from wages is considered by the Department [of Labor] to be non-payment of that amount of wages" and that "[w]here the employer depresses the employee's wages below the required wage by imposing on the employee any of the employer's business expense(s), the Department will consider the amount to be an unauthorized deduction from wages." It appears that the employers filing H-1B petitions on behalf of the beneficiary have not been in compliance with statutory and regulatory provisions regarding payment for the H-1B petition process. Notably, USCIS may revoke the approval of an H-1B petition if it is determined that the petitioner violated terms and conditions of an approved petition. *See* 8 C.F.R. §§ 103.2(b)(1) and 214.2(h)(11)(iii)(A)(3).

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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate 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.