



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **SEP 25 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:  
[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

for  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, California Service Center (hereinafter "the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a supplier of art glass and tiles. To employ the beneficiary in what it designates as an "Environmental Compliance Inspector" position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation 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). The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and

responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To 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 petitioner states in a letter of support dated May 9, 2012 that it commenced operations in 2005 and currently has two employees in its San Francisco office. It further claimed to have a gross annual income of over \$200,000, as well as additional offices located in Los Angeles, Shanghai, Hong Kong, and Bangkok. Regarding its business, the petitioner stated that it "sells and markets art glass and tiles," and that it also imports art frames and other merchandise for resale in the United States.

Regarding the proffered position, the petitioner states that the beneficiary will be responsible for the following duties:

- Research and analysis of environmental laws and regulations;
- Review and analyze client's environmental reports;
- Review client's environmental permits; communicate with regulatory agencies at client's request;
- Coordinate with client's environmental personnel to implement environmental management system;
- Perform on-site audits at client's request to ensure compliance with applicable laws[;]
- Inspect and review art glass and tile merchandise shipped from outside the US to ensure it complies with the company's and US standards;
- Utilize physical and biological principles in order to ensure the merchandise was manufactured in the proper method and in compliance[; and]
- Enforce and keep up to date the company's environmental regulation procedures.

The petitioner also states that the proffered position requires a bachelor's degree in one of the physical sciences, with coursework in biology, chemistry, environment and/or geology.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on September 26, 2012. The director asked the petitioner to submit additional evidence to establish that the proffered position was a specialty occupation under one of the four

alternate criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On December 19, 2012, counsel for the petitioner responded by providing further information regarding the proffered position and additional evidence. Specifically, counsel submitted copies of pertinent sections from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*), *O\*NET Online*, and the Standard Occupational Classification (SOC) Code relating to the positions of "Environmental Compliance Officer," "Quality Control Analysts," "Quality Control Inspectors," and "Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation." Counsel also restated the previously-submitted list of duties for the proffered position, but included the percentage of time that the beneficiary would devote to each such duty, as set forth below:

- Research and analysis of environmental laws and regulations (15%)
- Review and analyze clients' environmental reports (15%)
- Review clients' environmental permits; communicate with regulatory agencies at client's request (10%)
- Coordinate with clients' environmental personnel to implement environmental management system (10%)
- Perform on-site audits to ensure compliance with applicable laws and regulations (15%)
- Inspect and review art glass and tile merchandise shipped from outside the US to ensure it complies with the company's and US environmental standards (10%)
- Utilize physical and biological principles to ensure the merchandise was manufactured in the proper method in compliance with environmental regulations (10%)
- Enforce and keep up to date the company's environmental regulation procedures (15%)

The director found that the proffered position is akin to that of a Quality Control Inspector, and concluded that this occupational category is not a specialty occupation because it does not require at least a bachelor's degree in a specific specialty or its equivalent. The director concluded that the petitioner failed to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and denied the petition on January 28, 2013.

On appeal, counsel contends that, contrary to the director's findings, the proffered position is actually akin to that of an Environmental Compliance Inspector, and cites to *O\*NET Online's* section addressing that occupation. Counsel further contends that a bachelor's degree is a minimum educational requirement for the position, noting that, according to *O\*NET Online*, approximately 92% of individuals working in this occupation possess a four year bachelor's degree or higher. Counsel also asserts that the proffered position is specialized and complex.

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

make some preliminary findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.

Upon review of the record, the AAO finds a significant discrepancy in the record of proceeding with regard to the proffered position. This material conflict, when viewed in the context of the record of proceeding, undermines the claim that the proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

The AAO notes that there is a significant discrepancy between what the petitioner claims about the level of responsibility inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated on the Labor Condition Application (LCA) submitted in support of petition. That is, the petitioner provided an LCA in support of the instant petition that indicates that the occupational classification for the position is Compliance Officer, ONET/OES Code 13-1041, at a Level I (entry level) wage.<sup>1</sup> The petitioner's designation of the proffered position as a Level I position on the submitted LCA indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. Therefore, it is simply not credible that the position is one with complex, unique and/or specialized duties, as such a position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage.

Thus, for the foregoing reason, a review of the submitted LCA indicates that the information provided does not correspond to the level of work, requirements, and description that the petitioner ascribed to the proffered position in accordance with the pertinent LCA regulations. 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.

---

<sup>1</sup> The wage levels are defined in DOL'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 U.S. Dept 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 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." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). There must be sufficient, corroborating evidence in the record that demonstrates not only actual, non-speculative employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will be in a specialty occupation. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1) and 103.2(b)(12).

While the petitioner claims that it requires the services of a compliance officer to perform such duties as ensuring that "art glass and tile merchandise shipped from outside the US [comply] with the [petitioner's] and US environmental standards," the record is devoid of any evidence supporting the existence of the petitioner's environmental standards as well as the U.S. regulations that the petitioner must adhere to. The petitioner also has not provided an explanation of who currently performs the allegedly necessary environmental compliance duties or how the petitioner ensures compliance with federal regulations and its own environmental standards in the absence of an environmental compliance inspector.

The petitioner also claims that the beneficiary will "enforce and keep up to date the company's environmental regulation procedures." However, the petitioner has failed to demonstrate that the claimed "environmental regulation procedures" exist.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the petitioner has not met its burden of proof in this regard, 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.

Nevertheless, the AAO will fully 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. For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the inconsistencies and deficiencies in the record of proceeding regarding the beneficiary's proposed employment. Based upon a complete review of the record of proceeding, the

AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO will first discuss the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook* does not contain an occupation with the specific title of environmental compliance inspector.

The director found that the position encompasses the duties of a quality control inspector. According to the *Handbook*, the duties of a quality control inspector are as follows:

Quality control inspectors examine products and materials for defects or deviations from manufacturers' or industry specifications.

#### **Duties**

Quality control inspectors typically do the following:

- Read and understand blueprints and specifications
- Monitor or observe operations to ensure that they meet production standards
- Recommend adjustments to the process or assembly
- Inspect, test, or measure materials or products being produced
- Measure products with rulers, calipers, gauges, or micrometers
- Accept or reject finished items
- Remove all products and materials that fail to meet specifications
- Discuss inspection results with those responsible for products
- Report inspection and test data

Quality control inspectors ensure that your food will not make you sick, that your car will run properly, and that your pants will not split the first time you wear them. These workers monitor quality standards for nearly all manufactured products, including foods, textiles, clothing, glassware, motor vehicles, electronic components, computers, and structural steel. Specific job duties vary across the wide range of industries in which these inspectors work.

Quality control workers rely on a number of tools to do their jobs. Although some still use hand-held measurement devices, such as calipers and alignment gauges, they more commonly operate electronic inspection equipment, such as coordinate-measuring machines (CMMs). Inspectors testing electrical devices may use voltmeters, ammeters, and ohmmeters to test potential difference, current flow, and resistance, respectively.

Quality control workers record the results of their inspections and prepare test reports. When they find defects, inspectors notify supervisors and help to analyze and correct the production problems.

In some firms, the inspection process is completely automated, with advanced vision inspection systems installed at one or several points in the production process. Inspectors in these firms monitor the equipment, review output, and do random product checks.

The following are types of quality control inspectors:

**Inspectors** mark, tag, or note problems. They may reject defective items outright, send them for repair, or fix minor problems themselves. If the product is acceptable, the inspector certifies it. Inspectors may further specialize:

- **Materials inspectors** check products by sight, sound, or feel to locate imperfections such as cuts, scratches, missing pieces, or crooked seams.
- **Mechanical inspectors** generally verify that parts fit, move correctly, and are properly lubricated. They may check the pressure of gases and the level of liquids, test the flow of electricity, and do test runs to ensure that machines run properly.

**Testers** repeatedly test existing products or prototypes under real-world conditions. Through these tests, manufacturers determine how long a product will last, what parts will break down first, and how to improve durability.

**Sorters** separate goods according to length, size, fabric type, or color.

**Samplers** test or inspect a sample for malfunctions or defects during a batch or production run.

**Weighers** weigh quantities of materials for use in production.

In response to the RFE, counsel for the petitioner asserts that the proper classification of the position is as an environmental compliance inspector, and on appeal, counsel asserts that the director erred by classifying the proffered position as a quality control inspector. Counsel argues that the proffered position is much more complex, and contends that the director failed to consider the "environmental science nature" of the proffered position. Counsel concludes that the proper classification of the proffered position is as a compliance officer.

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooH/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Sept. 17, 2013).

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.<sup>2</sup> The *Handbook* continues by stating that approximately five percent of all employment

---

<sup>2</sup> The AAO notes that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

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

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

#### **Compliance Officers**

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Sept. 17, 2013).

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

The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Even if the petitioner established that its proffered position falls under the occupational category "Compliance Officers," the AAO observes that the *Handbook* does not establish that the occupation requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in the *specific specialty*, or its equivalent, as a minimum for entry into the occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Thus, the *Handbook* is not probative evidence of the occupational category "Compliance Officers" being a specialty occupation. Consequently, the proffered position's inclusion in the "Compliance Officers" occupational classification would not in itself satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal, counsel relies on *O\*NET Online's* summary report for Environmental Compliance Inspectors, an occupational category for which the *Handbook* does not have a detailed entry. The AAO notes that it assigns the occupation a "Job Zone Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." (The AAO again notes that the petitioner designated the position as a Level I position, the lowest of four possible wage-levels, which DOL indicates is appropriate for beginning level employees who have only a basic understanding of the occupation.) Further, *O\*NET Online* does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a *specific specialty* directly related to the duties of that occupation. Similarly, *O\*NET Online* does not indicate that the environmental compliance inspectors responding to its survey who report that they hold at least a bachelor's or master's degree hold their degrees in a specific specialty. Therefore, the *O\*NET Online* information is not probative of the proffered position being a specialty occupation. Even if the proffered position were considered akin to this classification as contended by the petitioner and counsel, there is no requirement that an individual possess a bachelor's degree in a specific specialty for entry into the occupation.

Upon review of the record, the petitioner has failed to submit probative evidence that normally the minimum requirement for positions falling under the occupational category "Compliance Officers" is at least a bachelor's degree in a specific specialty, or the equivalent. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO has also reviewed the information in the *Handbook* regarding the occupational category "Quality Control Inspectors" and notes that the *Handbook* does not indicate that these positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Specifically, the *Handbook* states:

Although a high school diploma is enough for the basic testing of products, complex precision-inspecting positions are filled by experienced workers.

#### **Education and Training**

Prospective quality control inspectors improve their chances of finding work by studying industrial trades, including computer-aided design (CAD), in high school or in a postsecondary vocational program. Laboratory work in the natural or biological sciences also may improve analytical skills and increase the chances of finding work in medical or pharmaceutical labs, where many of these workers are employed.

Education and training requirements vary with the responsibilities of the quality-control worker. For inspectors who do simple pass/fail tests of products, a high school diploma and some in-house training are generally enough.

Training for new inspectors may cover the use of special meters, gauges, computers, and other instruments; quality-control techniques; blueprint reading; safety; and reporting requirements. Some postsecondary training programs exist, but many employers prefer to train inspectors on the job.

As manufacturers use more automated inspection techniques that need less inspection by hand, workers in this occupation will have to learn to operate and program more sophisticated equipment and software applications. Because these operations require additional skills, higher education may be necessary. To address this need, some colleges are offering associate's degrees in fields such as quality control management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Quality Control Inspectors," <http://www.bls.gov/ooh/production/quality-control-inspectors.htm#tab-4> (last visited Sept. 17, 2013).

The *Handbook*, therefore, does not indicate that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into such a position.

Consequently, the AAO finds that, to the extent that it is described in the record of proceeding, the proffered position does not align with any occupational classification which the *Handbook* or *O\*NET Online* indicate as requiring, as a minimum standard for entry, at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding and as stated 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)(I).

As the evidence of record does not establish that the particular position proffered here is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a requirement of a bachelor's or higher degree, in a specific specialty, 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner relies on *O\*NET Online's* summary

report for Environmental Compliance Inspectors, which it claims demonstrates that a bachelor's degree requirement is common to the industry. The AAO disagrees.

The petitioner is a supplier of art glass and tiles with 2 employees and a gross annual income of approximately \$200,000. To satisfy this criterion, the petitioner consequently must demonstrate that similar organizations impose the same standards for parallel position in this specific industry. The record contains no evidence to support such a contention. Thus, this prong of the regulations has not been established.

More specifically, 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 submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, 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 and counsel to claim that uniform requirements are imposed within the petitioner's industry without providing corroborating evidence to support such an assertion. As previously mentioned, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Thus, the documentation provided does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of environmental compliance inspector. Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a 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 of the proffered position. While related courses may be beneficial in performing certain duties of an environmental compliance inspector, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other environmental compliance/quality control inspector positions that can

be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. The petitioner has not credibly demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or the equivalent. That is, the wage level designated by the petitioner in the LCA is not consistent with claims that the position would entail any particularly complex or unique duties relative to other environmental compliance/quality control inspector positions.

Further, the petitioner has not identified any specific duties that elevate the position to one that would require the education obtained through a four-year university program in a specific discipline. Thus, the petitioner has not established that a baccalaureate or higher degree, in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations or, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific discipline. The petitioner has therefore failed to establish the alternative prongs of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the record of proceeding 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 the equivalent. To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history.

A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees in a specific specialty. *See id.* at 388.

The petitioner makes no claim that it has previously employed an individual in the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>3</sup>

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than environmental compliance inspector or quality control inspector positions that are not usually associated with a degree in a specific specialty.<sup>4</sup>

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty

---

<sup>3</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. As noted above, were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

<sup>4</sup> As noted above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dept'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). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage.

(b)(6)

*NON-PRECEDENT DECISION*

Page 18

occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

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

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