



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 27 2014**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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 (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a three-employee "Design and build company"¹ established in 2006. In order to employ the beneficiary in what it designates as a part-time "Legal Coordinator" at a salary of \$18 per hour, the petitioner seeks 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B, a brief, and supporting documentation.

We find that, upon review of the entire record of proceeding, the evidence of record does not overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

Later in this decision, we will also address an additional, independent ground, not identified by the director's decision, that we find also precludes approval of this petition. Specifically, beyond the decision of the director, we find that the petitioner failed to submit a Labor Condition Application (LCA) that complies with the applicable statutory and regulatory provisions. For this additional reason, the petition may not be approved, as this separate ground of ineligibility is considered an independent and alternative basis for denial.²

I. THE PETITIONER AND THE PROFFERED POSITION

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a "Legal Coordinator" on a part-time basis. The LCA that the petitioner submitted in support of the petition was certified for use with a job prospect within the "Paralegals and Legal Assistants" occupational classification, SOC (O*NET/OES) Code 23-2011, and a Level I prevailing wage rate. The LCA also reflects that, as mentioned above, the petitioner assigned "Legal Coordinator" as the position's job title.

¹The petitioner provided a North American Industry Classification System (NAICS) Code of 541490, "Other Specialized Design Services." U.S. Dept of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541490 Other Specialized Design Services," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Aug. 26, 2014).

² We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner's March 27, 2013 letter of support, which was filed with the Form I-129, describes the petitioning company and proffered position as follows:

The Petitioner

[The petitioner] has entered its seventh year as a multi-service design and build company. Our expertise in designing and building, as well as rehabilitating properties is extremely well regarded in the greater Boston area. In fact, our strong workmanship and superior products and services have allowed us to grow to the point where we now need a legal coordinator to organize our internal paperwork in conjunction with lawyers. As we have cultivated a strong track record over the past seven years when it comes to designing, building, and rehabilitating homes and buildings, we are now in need of further internal services.

Proposed Specialty Occupation Position

As an internal Legal Coordinator, the beneficiary will be expected to use his educational and experimental background to accomplish the following:

- Assist in the review and coordination of our contracting efforts;
- Assist in the reviewing of contracts provided by third parties, including vendor agreements, confidentiality agreements and others;
- Assist in the review and coordination of cease & desist letters;
- Reviewing our internal paperwork;
- Reviewing and assisting with efforts related to our internal policies;
- Assisting with the drafting of our training programs;
- Other important duties as assigned.

The petitioner went on to state that "this role does not require licensure" and that the beneficiary's work will be accomplished "under the review and direction of licensed attorneys" when necessary. To perform the above-referenced duties, the petitioner states that it requires "at least a Bachelor's degree, equivalent or foreign equivalent, in law, legal studies or a related field, in addition to relevant work experience."

The director found the initial evidence insufficient to establish eligibility for the benefit sought and issued an RFE on June 18, 2013. The petitioner was asked to submit probative evidence to establish that the proffered position qualifies as a specialty occupation. The director outlined some of the types of specific evidence that could be submitted.

In response to the RFE, the petitioner refined the description of the position and its constituent duties into the following percentage-based responsibilities:

The Legal Coordinator will be responsible for seeking the capital required for the projects of [the petitioner] and for establishing and maintaining a direct communication with our Latin American investors. Also, s/he will be instrumental in making sure that our investors are in full compliance with Federal and State Securities laws, as well as international laws. The Legal Coordinator will be required to use his/her educational background in law and banking in order to satisfactorily complete the complex duties of this role and accomplish our lofty goals.

* * *

The Legal Coordinator will be charged with review of all contracts, ensuring through his/her legal and financial/banking background that the contracts comply with currency control as well as other Venezuelan regulations as well as the securities laws in the United States (30%). The beneficiary will also manage and oversee all our real estate contracts and legal transactions (30%). [The petitioner], through [redacted] (our holding company), is now buying and selling an average of 7 units a year that we actually expect to double by next year, making this role even more critical and necessary immediately. Furthermore, due in part to our growth and also the ever-changing complexity of applicable regulations both foreign and domestic, we urgently need help with our investor relationships, legal and financial reports and marketing as soon as possible (5%).

* * *

The Legal Coordinator will also deal with all [the petitioner's] Independent Contractors, most of whom are Spanish speakers. The Legal Coordinator will be responsible for making sure their legal documentation is in order, as well as any further negotiation that may be required as a result of their engagement in [the petitioner's] projects (10%); as well as review, translate and negotiate our Profit Participation Agreement with our South American prospective investors (10%). This is the document through which they commit to investing in our projects. Typically, this requires a great deal of bargaining, since each prospective investor wants to adjust the contract to the complex regulatory constraints of their respective countries. The beneficiary will organize each investor's personal file, making sure all the required documentation in both in (sic) English and Spanish is accurate and in full compliance with U.S. Securities Laws and Venezuelan stringent currency controls (10%). The Legal Coordinator will manage our relationships with our Lenders as [the petitioner]/[redacted] needs to fulfill their requirements to secure more sources of financing to our projects (5%). The beneficiary's background as well as his experience in Lending at [redacted] and in the banking industry in Venezuela will be critical in this process.

The director reviewed the documentation and found it insufficient to establish eligibility for the

benefit sought. The director denied the petition on October 29, 2013.

II. THE LABOR CONDITION APPLICATION

The issue before this office is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, U.S. Citizenship and Immigration Services (USCIS) looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

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

More specifically, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Paralegals and Legal Assistants" at a Level I (entry level) wage. Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.³ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job

³ For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

duties.⁴ DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

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

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

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

In the instant case, the petitioner claims that the nature of the proffered position involves complex, unique and/or specialized tasks that appear to be inconsistent with a Level I wage classification. Specifically, although a Level I (entry level) designation is appropriate for positions requiring "only a basic understanding of the occupation," in its letter in response to the director's RFE, the petitioner referenced the "complex duties of this role" and indicates that the proffered position requires "experience in capital markets in both Venezuela and the U.S., as well as prior relationships with potential investors in both of these countries."

The petitioner reiterated that "the complexity of utilizing investors from abroad as well as from out of state require a true understanding of the legal side of our business not only here in the U.S. but also in Venezuela" and "only someone with knowledge of these regulations, such as the beneficiary, would be able to perform the complex duties of the role." According to the petitioner, the beneficiary will be "instrumental in making sure that our investors are in full compliance with Federal and State Securities laws, as well as international laws" and "will be required to use his/her educational background in law and banking in order to satisfactorily complete the complex duties of

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

this role." The petitioner further claims that "the Legal Coordinator will be responsible for seeking the capital required" and "establishing and maintaining a direct communication with our Latin American investors."

Based upon the petitioner's statements, it appears that the level of knowledge required to perform duties in the proffered position surpasses the "basic" level of knowledge required of a Level I position. Although a Level I position is specifically designated for "employees [that] perform routine tasks that require limited, if any, exercise of judgment," the petitioner claims that the proffered position involves being "charged with review of all contracts" as well as "manage and oversee all real estate contracts and legal transactions." The petitioner appears to indicate that it will be relying heavily on the accuracy of the beneficiary's work product, as opposed to "closely monitor[ing] and review[ing] [it] for accuracy," as would be appropriate for a Level I position.

Thus, upon review of the assertions regarding the proffered position, we must question the level of complexity, independent judgment and understanding actually required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described by the petitioner conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, the selected wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

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

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

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

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits

branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

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

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

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

A review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations.⁵ 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.

III. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

A. Law

⁵ Fundamentally, it appears that (1) the petitioner previously claimed to DOL that the proffered position is a Level I, entry-level position; and (2) the petitioner is now claiming to USCIS that the position is a higher-level and more complex position in order to support its claim that the position qualifies as a specialty occupation. The petitioner cannot have it both ways. Either the position is more senior and complex (based on a comparison of the employer's job requirements to the standard occupational requirements) or it is an entry-level position.

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following 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 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.

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.

B. Preliminary Findings Regarding the Proffered Position's Duties and the Relative Complexity of the Position

Based on the evidence that is provided, we do not find that it establishes relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise. While the petitioner may claim that the nature of the proposed duties and the position that they are said to comprise elevate them above the range of usual Paralegal and Legal Assistant positions and duties by virtue of their level of specialization, complexity, and/or uniqueness, the evidence of record does not support these claims. 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. 1972)).

As evident in the job description quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More specifically, they lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. Take for example the following duty description:

Manage and oversee all our real estate contracts and legal transactions.

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of real estate contract and legal transactions the beneficiary would have to manage and oversee. Likewise, the record does not clarify the substantive work and associated applications of specialized knowledge that would be involved in the referenced duty. Likewise, we see that the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the percentage-assigned duties referenced above. Thus, we conclude that, as generally described as all of the elements of the constituent duties are, they do not - even in the aggregate - establish the nature of the position or the nature of the position's duties as more complex, specialized, and/or unique than those of paralegal and legal assistant positions that do not require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

C. Analysis

Having made the above preliminary findings, we turn now to the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁶ The *Handbook's* discussion of the duties of the Paralegals and Legal Assistants occupational group states, in pertinent part, the following:

Paralegals and legal assistants do a variety of tasks to support lawyers, including maintaining and organizing files, conducting legal research, and

Paralegals and legal assistants typically do the following:

⁶ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2014-15 edition available online.

- Investigate the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and maintain documents in a paper or electronic filing systems
- Gather and arrange evidence and other legal documents for attorney review and case preparation
- Write reports to help lawyers prepare for trials
- Draft correspondence and legal documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials by handling exhibits, taking notes, or reviewing trial transcripts
- File exhibits, briefs, appeals and other legal documents with the court or opposing counsel
- Call clients, witnesses, lawyers, and outside vendors to schedule interviews, meetings, and depositions

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. However, their specific duties may vary depending on the size of the firm and the area of law in which the paralegal works.

In small firms, paralegals duties tend to vary more. In addition to reviewing and organizing documents, paralegals may prepare written reports that help lawyers determine how to handle their cases. If lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments and draft documents to be filed with the court.

In large organizations, paralegals may work on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal may only review legal material for internal use, maintain reference files, conduct research for lawyers, or collect and organize evidence for hearings.

Litigation paralegals may assist attorneys in preparing for trial by organizing document binders, creating exhibit lists, or drafting settlement agreements. Some

litigation paralegals may also help coordinate the logistics of attending the trial, including reserving office space, transporting exhibits and documents to the courtroom, and setting up computers and other equipment.

Paralegals use technology and computer software for managing and organizing the increasing amount of documents and data collected during a case. Many paralegals use computer software to catalog documents, and to review documents for specific keywords or subjects. Because of these responsibilities, paralegals must be familiar with electronic database management and be up to date on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites.

Paralegals may specialize in areas such as litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, bankruptcy, immigration, family law, and real estate. In addition, experienced paralegals may assume supervisory responsibilities, such as overseeing team projects or delegating work to other paralegals.

Paralegals and legal assistants often work in teams with attorneys, fellow paralegals, and other legal support staff. They may also have frequent interactions with clients and third-party vendors.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Paralegals and Legal Assistants," <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-2> (last visited Aug. 26, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into the Paralegals and Legal Assistants occupational group:

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

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

Many paralegal training programs offer an internship, in which students gain practical experience by working for several months in a private law firm, the office of a public defender or attorney general, a corporate legal department, a legal aid organization, or

a government agency. Internship experience helps students improve their technical skills and can enhance their employment prospects.

Employers sometimes hire college graduates with no legal experience or education and train them on the job. In these cases, the new employee may have experience in a technical field that is useful to law firms, such tax preparation, nursing, or criminal justice.

Id. at <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-4> (last visited Aug. 26, 2014).

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

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

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

In this case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is the minimum requirement for entry into

the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that this particular 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, we find 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 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, the record contains no letters or affidavits from firms or persons in the industry attesting to such a requirement. Further, there is no evidence of a professional association having made a bachelor's degree in a specific specialty, or the equivalent, a minimum requirement for entry.

The ten job-vacancy announcements submitted in response to the RFE and on appeal by counsel do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). That is, neither the job-vacancy announcements themselves nor any other evidence within the record of proceeding establish that those advertisements pertain to positions that are parallel to the proffered position, as required for evidence to merit consideration under the first alternative prong. In this regard, we make several specific findings.

First, we note that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions among similar organizations* (emphasis added)." For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation regarding other organizations is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158,

165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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. We discount all ten advertisements because the petitioner has failed to establish that they are in the petitioner's industry, as would be required if those submissions were to be within this prong's zone of consideration. Again, the language of this prong limits the range of relevant evidence to the petition-pertinent industry's practices (stating "[t]he degree requirement" as one that would be "common to the industry" as well as "in parallel positions among similar organizations.")

Furthermore, while some of the advertisements bear the titles "Legal Coordinator" and "Paralegal," the job title and occupational group identified in the petitioner's certified LCA, it is the nature of the duties comprising the advertised positions that would determine whether those positions are in fact parallel to the proffered position. However, we see that the duty descriptions of the advertised positions and their constituent duties are not substantially similar to the proffered position's duties as stated in the petitioner's letters. In addition, we observe that many of the advertised positions do not appear to be parallel to the proffered position. Specifically, although the petitioner has designated the proffered position as a Level I position, indicating that it is an entry-level position, it has provided several job announcements for positions requiring extensive experience.⁷ So, the job-vacancy advertisements do not establish that the advertised positions are "parallel" to the proffered position.

Moreover, the submitted advertisements do not all specify a requirement for a bachelor's or higher degree in a specific specialty or its equivalent. By way of example, the [REDACTED] advertisement for a "Paralegal Job" only states "Bachelors Degree (or equivalent)" without any specification of any particular academic major. Likewise, the [REDACTED] advertisement for a "Contract Paralegal" specifies a "Bachelor's Degree" with no indication that the bachelor's degree must be in any particular area or equivalent to a bachelor's or higher degree in a specific specialty. In addition, the [REDACTED] advertisement for a "Legal Coordinator" only states a "Bachelors Degree from respected college/university with a strong academic record" as the educational requirement.

As the submitted vacancy-announcements are not probative evidence towards satisfying this criterion, further analysis of their content is not necessary. Therefore, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that

⁷ By way of example, the Bain & Company advertisement for a "Senior Legal Coordinator" states "A minimum of two years relevant experience." The advertisement from [REDACTED] for a "Legal Coordinator" requires "10-15 years experience in a legal administrative or paralegal position at medical company law department or law firm." The advertisement from [REDACTED] for a "Commercial Real Estate Paralegal" states "Minimum 5 years' experience as a real estate paralegal." One of the [REDACTED] advertisements submitted for a "Paralegal Job" states "Experience Required: 3-5 years." The extensive experience that these job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position, a Level I, entry-level position.

are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

Next, we find that the evidence of record does not satisfy 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."

The statements of counsel and the petitioner with regard to the claimed complex and unique nature of the proffered position are acknowledged. However, as reflected in our earlier comments and findings regarding the record's description of the duties comprising the proffered position, the petitioner has not provided sufficient evidence to establish why it is more likely than not that the proffered position can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

Their assertions are further undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. We incorporate here by reference and reiterate our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the level of relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

As the evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the position.

Our review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior

recruiting and hiring for the position. Additionally, the record must establish that the imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In response to the director's RFE, the petitioner explained that "[t]he Legal Coordinator is a new role within our company." While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is not possible that an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. Even if the record contained such evidence, we would still find that the petitioner failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the record does not, as indicated above, establish that its degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position, a determination which is strengthened by the petitioner's submission as the supporting LCA one that was certified for the lowest wage-level, which is appropriate for a comparatively low, entry-level position relative to others within its occupation.

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's 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 the specific specialty or its equivalent.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entry for positions falling within the "Paralegals and Legal Assistants" occupational category. Again, the *Handbook* does not indicate that a bachelor's or higher degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such position; and the record indicates no factors that would elevate the duties proposed for the beneficiary above those of other entry-level positions generally discussed in the *Handbook*. As reflected in this decision's earlier discussion of the duty descriptions in the petitioner's letter of support, the proposed duties as described in the record of proceeding contain no indication of

specialization and complexity such that the knowledge they would require is usually associated with any particular level of education in a specific specialty. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex as to require knowledge usually associated with at least a bachelor's degree in a specific specialty, or the equivalent.

Additionally, we reiterate our findings that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a Level I wage, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

The *Prevailing Wage Determination Policy Guidance* issued by DOL states the following with regard to Level I wage rates:

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 [emphasis in original].

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

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Id.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that the Level II wage-rate itself is associated with performance of only "moderately complex tasks that require limited judgment," is indicative of the relatively low level of complexity imputed to the proffered position by virtue of the petitioner's Level I wage-rate designation. Further, we note the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

Id.

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Id.

Here, we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level, entry position relative to others within the same occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered

position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not establish that the proffered position qualifies as a specialty occupation.

An application or petition that fails to comply with the technical requirements of the law may be denied by this office 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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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