



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 31 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

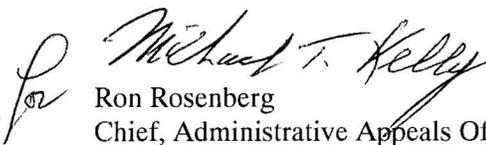
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as an early childhood education and Montessori-preschool center established in 2006.¹ In order to employ the beneficiary in a full-time position to which the petitioner assigns the title "Lead Teacher/Counselor," at a salary of \$40,560 per year, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); the petitioner's response to the RFE; (3) the director's decision denying the petition; and (4) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

As will now be discussed, to meet its burden of proof in this regard, 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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

¹ The record of proceeding reflects that the petitioner has been operating since 1998 but adopted the Montessori method into its practice in 2006.

the arts, and which requires [(2)] 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, the position must also meet one of the following criteria:

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

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

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

accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

In the pertinent sections of the Form I-129, the petitioner identified its Type of Business as "Early Childhood Education and Montessori-Preschool Center"; stated that it was currently employing 20 persons as of the date of the petition's filing; and indicated that it, while it has been has been operating since 1998, it converted to a Montessori-method facility in 2006.

The March 27, 2013 letter of support signed by the petitioner's president includes the following paragraphs regarding the petitioner:

Ranmal Educational Services, dba Montessori School of [REDACTED] (*hereinafter* "Petitioner") is a Montessori preschool that caters to children between the ages of 6 months to elementary. Petitioner has been in existence since 1998. Petitioner is one of the few Montessori schools in its caliber that caters [sic] the Standard Achievement Test 10, more commonly known as SAT 10 to its 3rd and 4th grade students. SAT 10 encompasses reading comprehension, language, mathematics science, social science, and social studies.

Petitioner's main focus is to create a scholastic environment, consisting of traditional school techniques blended with traditional "Montessori" learning techniques that is implemented to enhance the child's early childhood learning abilities. In order to achieve this goal, Petitioner has now made available the position of "Lead Pre-school Teacher/Counselor."

According to the copies of pages submitted into the record from petitioner's Internet site, the petitioner operates two private schools in California that incorporate the Montessori teaching method; i.e., one in [REDACTED]. The evidence of record, including the address entries in the Form I-129 and the LCA indicate that the beneficiary would work at the petitioner's school in [REDACTED].

The AAO has no reason to doubt the petitioner's assertions that the beneficiary would perform the proffered position at what the petitioner describes as "an early childhood education and Montessori preschool center." Nor does the AAO doubt that if this petition were approved the beneficiary would employ the Montessori training which the record indicates that she has obtained.²

The petitioner provided a description of the position in its March 27, 2013 letter of support, which was filed with the Form I-129. According to the "Job Description of Position Offered" paragraph of that letter, the position included the following job responsibilities:³

- Providing guidance and serving as a resource for new and less-established teachers and students;
- Observing teachers and students, performing independent analysis of observations made, deriving reasonable and well-informed decisions, implementing these decisions via mentoring and counseling teachers, parents, and students;
- Designing and implementing programs, curriculums, activities, and special projects;
- Developing and overseeing the school's behavior management system and plan for the social-emotional growth of the enrolled children;
- Executing all necessary tasks to make sure the school and its programs are in compliance with all County, State and Federal Regulations;
- Corresponding with Family Support Departments;
- Conducting parent-teacher meetings; drafting newsletters and work schedules;
- Updating parents in reference to child's behavior and academic development;
- Managing and assisting teachers and teacher's aids;
- Attending and participating in County, State, and Federal meetings conducted in reference to the development of Early Childhood Education;
- Supervising teacher and teacher's aids during school hours;
- Creating and implementing classroom environments that enhance the child's learning capabilities; and

² It should be noted, however, that the record does not contain any claim or supporting documentary evidence that the petitioner is formally associated with the American Montessori Society (AMS) or any other voluntary Montessori membership organization that evaluates its member schools and assigns different degrees of membership to them on the basis of that school membership-organization's published evaluation standards. The AAO does not accord any negative weight to this fact – for there is no H-1B requirement for membership in, or evaluation by, such an organization. However, as proper and legitimate as the petitioner's identification of itself as a Montessori school appears to be, that description is not in itself sufficient for the AAO to conclude that the proffered position would require the application of any particular educational level of highly specialized knowledge in a specific specialty.

³ The letter itself relates these duties in successive sentences forming one paragraph. We have modified the format into bullet sections for easier reading.

- Reporting to Upper management.

The director reviewed the support letter and issued an RFE seeking clarification as to the position's actual requirements.⁴ In response the petitioner provided the following requirements:

1. Teaching Students on a day-to-day basis, observing her students and teacher aids on a day-to-day basis, and making an independent analysis of observations made. Based on this analysis, Beneficiary shall be required to derive reasonable and well informed decisions and thereafter, implement these decisions via mentoring and counseling teachers, parents and students. Additionally, Beneficiary will be also responsible to manage and assist other teachers and conduct meetings with parents to discuss the techniques to enhance the student's learning capabilities. As Lead Teacher, Beneficiary shall be required to invest approximately 70% of her work time in reference to executing these duties (*a BSc and experience in Early Childhood Education is a minimum requirement-see below*).⁵
2. Beneficiary shall be required to design and implement programs, curriculums, activities, special projects for aiding students in their learning activities and oversee the school's behavior management system and plan for the social-emotional growth of the enrolled student. As Lead Teacher, Beneficiary shall be required to invest approximately 20% of her work time in reference to executing these duties. (*a BSc and experience in Early Childhood Education is a minimum requirement-see below*).

⁴ The director noted that the requirements were more closely related to an "Instructional Coordinator," SOC 25-9031. The director asked the petitioner to either provide a Labor Conditions Application (LCA) certified for that SOC, or provide a list of job requirements which established the position was actually for the certified SOC. In response and again on appeal, the petitioner asserts the position is for a Lead Preschool Teacher/Counselor with the most closely related description being Preschool Teacher/Not Special Education SOC 25-2011. (We note as mere clerical error the petitioner's statements that the director had characterized the position as an "Industrial Coordinator" (rather than as an "Instructional Coordinator.") In any event, it appears that the director did *not* base her decision upon characterization or analysis of the proffered position as being that of an Industrial Coordinator. Further, the AAO's bases its decision upon its separate and independent analysis of the proffered position not as that of an industrial coordinator but as a preschool teacher position as described in the record.

⁵ Although not relevant to the AAO's present decision, we note that the record does not establish that the beneficiary has a degree in Early Childhood Education plus experience in Early Childhood Education. The petitioner alleges that the beneficiary has a Bachelor of Arts in a management-related field, a Diploma in the [REDACTED], and two years of related work experience. Thus does the petitioner remark that "[r]egardless of her management background, Beneficiary is well qualified for the proffered position."

3. In addition to the forgoing duties, Beneficiary will be require to invest approximately 10% or the remainder of her time in executing the following duties that are incidental the position of Lead Teacher/Counselor: executing all necessary tasks to make sure the school and its programs are in compliance with all County, State and Federal regulations; corresponding with Family Support Departments; Attending and participating in County, State and Federal meetings conducted in reference to the development of Early Childhood Education.

As a prelude to its application H-1B specialty-occupation framework earlier reviewed in this decision, the AAO will first enter some preliminary findings that it considers material to the proper disposition of this appeal.

The AAO's finds that, as clearly reflected in this decision's earlier quotations from the petitioner's letter of support filed with the Form I-129 and from the petitioner's letter of response to the RFE, the petitioner relates the duties of the proffered position – and by extension that position itself – in exclusively generalized terms (such as, by way of some representative examples: (1) “Providing guidance and servicing as a resource for new and less established teachers”; (2) “Designing and implementing programs, curriculums, and special projects; (3) “Developing and overseeing the school's behavior management system”; (4) “Managing and assisting teachers and teacher's aids”; (5) “Teaching students on a day-to-day basis”; and (5) “[Being] responsible to manage and assist other teachers and conduct meetings with parents to discuss the techniques to enhance the student's learning capabilities.” As such, the record of proceeding limits itself to presenting the proffered position and its constituent duties in terms of generalized functions, without providing sufficiently detailed explanatory information and documentation to establish (a) the substantive nature of specific aspects of work in which the beneficiary would have to engage in order to perform those functions; (b) the practical and theoretical applications of highly specialized that would be required to performing such work; and (c) any necessary correlation between those applications and a requirement for at least a bachelor's degree in a specific specialty or the equivalent.

As a corollary to the above findings, we also find that, as an additional function of the generalized and relatively abstract descriptions of the proposed duties, the evidence of record does not distinguish either the proffered position or its constituent duties as more specialized, complex, and/or unique than those within the Preschool Teachers occupational classification that are performed by persons without at least a bachelor's degree in a specific specialty or the equivalent.

Also, the AAO makes the following findings with regard to some particular claims within this record.

Because they are not substantiated by any documentary evidence in record, AAO accords no weight to (1) counsel's suggestion on appeal (at page 8 of the appeal brief) that the proffered position is “equivalent to that of a ‘Head Start Program’”; (2) counsel's assertion on appeal (at page 10 of the appeal brief) that the performance of the proffered position requires a person “with both practical training and college level training equivalent to a Bachelor or higher degree in ‘Early Childhood Education’”; (3) the suggestions in the petitioner's July 1, 2013 letter of response to the RFE (a) to the effect that, as a person designated as a Lead Teacher at a preschool, the beneficiary would be

servicing in a more elevated position than actually encompassed by the Preschool Teachers occupational category, namely, as part of what the petitioner describes as the "Lead Teacher occupation" (at page 5 of the reply letter); (b) that only a person "who has obtained vast hours of practical and theoretical training in early childhood behavior . . . and attained a bachelor's degree in Early Childhood Education can be qualified to execute" the duties of the proffered position (at page 6 of that RFE reply letter.) 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO will now discuss 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.

The AAO 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.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.

The petitioner claims that the proffered position is that of a Lead Preschool Teacher/Counselor. The *Handbook* addresses Preschool Teachers in the chapter which addresses the related Standard Occupational Classification (SOC) title and code for the Accountants occupational classification.

In pertinent part, the *Handbook* states the following with regard to this occupational classification:

Preschool teachers typically do the following:

- Prepare children for kindergarten by introducing concepts they will explore further in kindergarten and elementary school
- Work with children in groups or one on one, depending on the needs of children and the subject matter
- Plan and carry out a curriculum that targets different areas of child development, such as language, motor, and social skills
- Organize activities so children can learn about the world, explore interests, and develop talents

- Develop schedules and routines to ensure children have enough physical activity, rest, and playtime
- Watch for signs of emotional or developmental problems in children and bring problems to the attention of parents
- Keep records of the students' progress, routines, and interests, and keep parents informed about their child's development

Young children learn from playing, problem solving, questioning, and experimenting. Preschool teachers use play and other instructional techniques to teach children about the world. For example, they use storytelling and rhyming games to teach language and vocabulary. They may help improve children's social skills by having them work together to build a neighborhood in a sandbox or teach math by having children count when building with blocks.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Preschool Teachers," <http://www.bls.gov/ooh/Education-Training-and-Library/Preschool-teachers.htm> (accessed January 6, 2014).

With regard to the educational requirements necessary for entry into this occupational classification, the *Handbook* states that:

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

Preschool teachers in Head Start programs are required to have at least an associate's degree. However, at least 50 percent of all preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field. Those with a degree in a related field must have experience teaching preschool-age children.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed.,

“Preschool Teachers,” <http://www.bls.gov/ooh/Education-Training-and-Library/Preschool-teachers.htm#tab-4> (accessed January 6, 2014).

Thus, as seen by the *Handbook's* analysis, the position does not require the “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.” Section 214(i)(1) of the Act.

Thus, the *Handbook* does not indicate that a minimum of a bachelor’s degree in a specific specialty, or its equivalent, is normally required for entry into this occupational category. Instead, this category accommodates a wide spectrum of educational credentials, and that spectrum includes credentials that fall short of a bachelor’s degree.

The AAO accords no evidentiary value to the petitioner’s unsubstantiated assertion that the proffered “Lead Preschool Teacher/Counselor” position represents a new career field and is not squarely addressed by the *Handbook*. Also, the AAO is not persuaded by the petitioner’s partial reliance upon what it refers to as the “Counselor” component of the position. In this particular regard, the AAO finds that the evidence of record does not develop this component sufficiently to establish either (a) its substantive knowledge requirements or (b) a material difference from the range of preschool teacher positions that are held by persons who do not possess at least a bachelor’s degree in a specific specialty or its equivalent. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Likewise, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof, as the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position being proffered would involve performing tasks at a level requiring the theoretical and practical application of at least a bachelor’s-degree level of a body of highly specialized knowledge in accounting. This the petitioner does not do.

As such, the petitioner’s descriptions of the proposed duties amount to a claim that the proffered position would involve the generalized functions usually associated with the general occupational classification as reported in the O*NET. However, such descriptions of generalized functions that are generic to an occupational classification do not convey any substantive information regarding the substantive nature of the actual services that would be required of the beneficiary in actual performance of the particular accounting position in question. Nor do such generalized descriptions provide a sufficient basis for a USCIS determination as to what particular level of education or educational equivalency would be required to perform them.

Nor does the record of proceeding contain any persuasive documentary evidence from any relevant authoritative source establishing that the proffered position’s inclusion in this occupational category would be sufficient in and of itself to establish the proffered position as, in the words of this

criterion, a “particular position” for which “[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry.”

As the petitioner references and submits into the record a complete copy of the O*NET’s Summary Report on the occupational category of Preschool Teachers, Except Special Education, the AAO will here excerpt and comment on particularly pertinent sections of that Summary Report, which, as will be discussed, do not support the petitioner’s claim for specialty occupation classification of the position proffered in this petition. The Job Zone section of the Summary Report states:

JOB ZONE

Job Zone Three: Medium Preparation Needed

Title

Education

Most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree.

Related Experience

Previous work-related skill, knowledge, or experience is required for these occupations. For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job.

Job Training

Employees in these occupations usually need one or two years of training involving both on-the-job experience and informal training with experienced workers. A recognized apprenticeship program may be associated with these occupations.

Job Zone Examples

These occupations usually involve using communication and organizational skills to coordinate, supervise, manage, or train others to accomplish goals. Examples include food service managers, electricians, agricultural technicians, legal secretaries, interviewers, and insurance sales agents.

SVP Range

(6.0 to < 7.0)

Occupational Information Network (O*NET), O*NET OnLine, Summary Report for SOC 25-2011.00 – Preschool Teachers, Except Special Education, available on the Internet at <http://www.onetonline.org/link/summary/25-2011.00> (accessed (accessed January 27, 2014).

The “SVP Range” (6.0 to < 7.0) specified above is relatively low, as indicated in the O*NET definition of those ranges, copied below (with emphasis added):

O*NET OnLine Help

Specific Vocational Preparation (SVP)

Specific Vocational Preparation is a component of Worker Characteristics information found in the *Dictionary of Occupational Titles* (U.S. Department of Labor, 1991).

Specific Vocational Preparation, as defined in Appendix C of the *Dictionary of Occupational Titles*, is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

1. Vocational education (high school, commercial or shop training, technical school, art school, and that part of college training which is organized around a specific vocational objective)
2. Apprenticeship training (for apprenticeable jobs only)
3. In-plant training (organized classroom study provided by an employer)
4. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker)
5. Essential experience in other jobs (serving in less responsible jobs, which lead to the higher-grade job, or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level Time

1. Short demonstration only
2. Anything beyond short demonstration up to and including 1 month
3. Over 1 month up to and including 3 months
4. Over 3 months up to and including 6 months

- 5. Over 6 months up to and including 1 year
- 6. Over 1 year up to and including 2 years
- 7. Over 2 years up to and including 4 years
- 8. Over 4 years up to and including 10 years
- 9. Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

U.S. Department of Labor. (1991). *Dictionary of Occupational Titles* (Rev. 4th ed.). Washington, DC: U.S. Government Printing Office.

Occupational Information Network (O*NET), O*NET Online Help, Search Topic: "Special Vocational Preparation," available on the Internet at www.onetonline.org/help/online/svp (accessed January 27, 2014).

The AAO also notes that the Education section of the Summary Report (i.e., the section that reports what those members of the occupational classification responding to a voluntary survey indicated as their perception of the required education for the occupation) reads as follows:

| Education | |
|--|---------------------------------|
| Percentage of Respondents | Education Level Required |
| 31  | Some college, no degree |
| 22  | Associate's degree |
| 21  | Bachelor's degree |

Occupational Information Network (O*NET), O*NET OnLine, Summary Report for SOC 25-2011.00 – Preschool Teachers, Except Special Education, available on the Internet at <http://www.onetonline.org/link/summary/25-2011.00> (accessed (accessed January 27, 2014).

While the above-referenced percentages do not represent the results of a statistically valid survey, we find that they are significant for their reinforcement of the *Handbook's* information and our own comments and findings above.

As the evidence in the record of proceeding does not establish that a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no reliable submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Nor has the petitioner submitted any probative evidence to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

First, the petitioner provided selected job advertisements in an attempt to show the industry standard. The first is from the [REDACTED]. We note that [REDACTED] has seven campuses in California and Nevada, and provides preschool and elementary school instruction. The petitioner has not established how it is similar to this organization. Furthermore, the advertisement provided seeks to hire elementary, not preschool, teachers.

The next advertisement was from [REDACTED] which sought to hire a Lead Teacher. There is no evidence in the record which establishes that the petitioner and this school are similar organizations in size and scope. Furthermore, the school states it requires a bachelor's degree but it does not require a particular focus of study.

Next, the petitioner provided a posting from [REDACTED] a preschool in Washington, D.C. Here again, the record has not provided details which could establish the similarities between this school and the petitioner.

The petitioner provided a brief Internet posting from [REDACTED]. The record contains no information about this entity's size or scope and how it compares to the petitioner. The petitioner provided a posting from [REDACTED] for All Program. In addition to providing no details about the school, the posting states that applicants must possess a minimum of eighteen (18)

units of Early Childhood Education coursework from an accredited college or university. The position requires at least one year teaching experience, which may be waived if the applicant has a degree in ECE. Thus, this position does not require a minimum of a bachelor's degree, let alone on in a specific specialty.

The [REDACTED] advertised an opening for a Lead Toddler Teacher and stated that the minimum requirement for an applicant was a bachelor's degree in ECE. However, the record contains no evidence which shows the size and similarity of this school and the petitioner.

An advertisement from [REDACTED] sought applicants with a college degree or equivalent. However, no specific course of study was specified, and the vacancy posting contains no information from which the AAO can discern the advertising employer's method of determining college-degree equivalence, let alone whether that determination is based upon the application of standards that would accord with those that USCIS requires for the H-1B program, as specified in the regulations at 8 C.F.R.

[REDACTED] advertised an opening for a Preschool Teacher, and stated the minimum requirements were either an Associate's degree or a Bachelor's degree. As [REDACTED] is content to hire applicants with an Associate's degree this evidence does not support the petitioner's burden. Advertisements from three other schools likewise sought to hire a preschool teacher with either an associate's or bachelor's degree.

The record also contains printouts showing faculty biographies at four different preschools. However, these do not establish the minimum entry requirements for the industry are a bachelor's degree in a specific discipline. The lead preschool teachers at [REDACTED] have degrees in Elementary Education and Computer Science. At Montessori [REDACTED] the lead preschool teachers have degrees in Art Education, Psychology, Child Development, Religious Studies, Sociology, and three teachers did not have bachelor's degrees. The pre-K teacher at [REDACTED] has a Master's degree in Early Childhood Education. Finally, the preschool teacher at [REDACTED], has a Bachelor's degree in Child and Adolescent Development.

The four schools selected by the petitioner for inclusion in the record of proceeding do not establish that the industry requires a bachelor's degree in a specific course of study for entry into the career. Furthermore, the record has no reliable evidence sufficient to establish that the industry standard is different from that reflected for preschool teachers in the *Handbook* and in the O*NET, which we have discussed above.

We also specifically find that, as it lacks any documentary evidence from any authoritative source to establish that even the most favorable advertisements are more representative of the employment practices of the petitioner's industry than the information related in the *Handbook* and in the O*NET, the record of proceeding fails to establish that those advertisements even rebut the *Handbook* or the O*NET. Rather, the advertisements appear consistent with the *Handbook* and the O*NET information, in that the pertinent information in each of those resources recognizes that while some employers of preschool teachers may require at least a bachelor's degree in a specific specialty or the equivalent, such is not the industry standard.

Therefore, as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO finds that the petitioner did 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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Here the AAO incorporates by reference into its analysis of this criterion this decision's earlier comments and findings with regard to the generalized and relatively abstract level at which the proffered position and its constituent duties are presented.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform that position. In this regard, the AAO observes that the record of proceeding lacks substantive evidence of any aspect of the proffered position that would elevate its personnel requirements above those that the *Handbook* reports for the Preschool Teachers occupational category – and, as shown earlier in this decision –the *Handbook* indicates that preschool teaching positions generally do not require the services of a person with at least a bachelor's degree or the equivalent, let alone such a degree or degree-equivalence in a specific specialty. .

Also, it is worth repeating that, due to the lack of substantial evidence regarding its substantive duties and the associated applications and educational levels of any body of highly specialized knowledge that may be required to perform them, the AAO accords no probative weight to the counselling aspect of the proffered position.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns 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 degree, or the equivalent, in a specific specialty for the position.

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

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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. 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 a 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 proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

According to the record, the petitioner has twenty employees. The record does not establish how many preschool teachers the petitioner currently employs or has employed in the past. The record of proceeding contains evidence that one of the petitioner's employees has a bachelor's degree in management. However, this does not establish a 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. Accordingly, the evidence of record does not satisfy this particular criterion either.

Next, the AAO finds that the petitioner has not satisfied 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 specialty.

Here the AAO reiterates its earlier discussion regarding the *Handbook's* information on the "Preschool Teachers" occupational category, and the AAO here also incorporates and adopts as part of its analysis this decision's earlier comments and findings reflecting the fact that the petitioner describes the proposed duties in terms of generalized and relatively abstract functions. The AAO finds that those descriptions are not sufficiently detailed to relate how, if at all, the nature of the duties of this particular proffered position is so specialized and complex that the job's performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

Again, the *Handbook* does not indicate that a minimum of a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupational category of Preschool Teachers. Instead, this occupational category accommodates a wide spectrum of educational credentials, including credentials that fall short of a bachelor's degree, or the equivalent, in early childhood education or any closely related specialty.

The evidence of record simply fails to develop the nature of the proffered position's duties with sufficient specificity to elevate it above the level of complexity and specialization of the nature of the duties of the wide range of preschool teacher positions for which neither the *Handbook* nor any evidence in this record shows a requirement for knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

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).

As the evidence in the record of proceeding does not establish the nature of the proposed duties as so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The appeal will be dismissed and the petition will be denied for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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