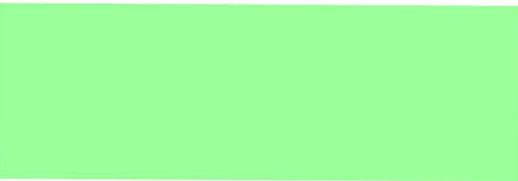


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

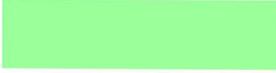


U.S. Citizenship
and Immigration
Services



DATE: **JUN 20 2014**

OFFICE: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

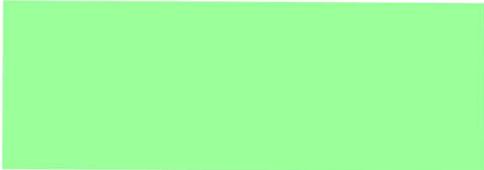
Petitioner:
Beneficiary:



PETITION:

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

ON BEHALF OF PETITIONER:

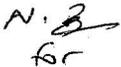


INSTRUCTIONS:

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

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

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 18, 2013. In the Form I-129, the petitioner describes itself as a Montessori school (private preschool and elementary school) established in 1995, with 30 employees. In order to employ the beneficiary in what it designates as a "Montessori Primary Teacher," the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on October 31, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for the denial of the petition was erroneous, and submits a brief and supporting documentation in support of this contention.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE and supporting documentation; (4) the director's decision denying the petition; and (5) the petitioner's Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.¹

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

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a Montessori Primary Teacher to work on a full-time basis at a salary of \$38,040 per year.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Kindergarten Teachers, Except Special Education" – SOC (ONET/OES) Code 25-2012. The petitioner designated the proffered position as a Level I (entry level) position.

Among the documents submitted with the Form I-129 is a letter of support dated March 28, 2013, signed by the petitioner's president. The petitioner stated that it provides "Montessori education to pre-school and elementary children (ages 2 -8)." The petitioner also explained the

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

requirements for the position of Montessori Primary Teacher, as follows:

At a minimum, the position requires that applicants must have graduated with a bachelor's degree, preferably with a major in the field of education. We also prefer that applicants must have a Montessori teaching credential, but we will accept applicants who do not have the credential provided that they must have teaching experience at an elementary school level.

We have always required a bachelor's degree (or equivalent experience/training) for our primary teachers. A bachelor's degree is routinely required in order to obtain a full Montessori teaching credential.

The petitioner also explained that since it is a private school, the teachers are not required to obtain a California teaching credential or license. The petitioner goes on to state, "[w]e do require that our teachers obtain a Montessori teaching credential which must be issued by either the [REDACTED] or [REDACTED] within two years from the date of hire."

The petitioner noted that the beneficiary holds a bachelor's degree in Social Work from the [REDACTED] of Applied Sciences in Nuremberg, Germany. With the petition, the petitioner submitted, among other things, a copy of the beneficiary's foreign diploma, transcript, resume, and letters of recommendation, as well as a credential evaluation report from [REDACTED]. The evaluation states that the beneficiary's qualifications are equivalent to a "four-year Bachelor of Social Work Degree from an accredited university in the United States." The petitioner also submitted a copy of the beneficiary's "Early Childhood Credential" certificate awarded by [REDACTED].

In addition, the petitioner submitted a copy of the job advertisement for the proffered position which lists the following information:

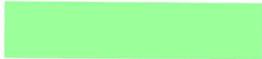
Job Description: Under the supervision of the principal or director, plan, organize, present, and evaluate program of instruction in various subjects using the Montessori method of teaching. Prepare, administer, and grade tests. Maintain classroom discipline. Observe and evaluate student's performance and potential. Meet with parents and school staff to discuss student's progress.

Minimum Requirements: Must have a bachelor's degree preferably in the field of education. We prefer candidates who have a Montessori teaching certificate but will accept those who have at least 6 months teaching experience at an elementary school.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on July 30, 2013. The director requested that the petitioner provide evidence to establish, among other things, that the proffered position qualifies as a specialty occupation. The director outlined some of the specific types of evidence that could be submitted.

Counsel for the petitioner responded to the RFE and submitted the petitioner's response letter and additional evidence. In a letter dated August 14, 2013, the petitioner provided the following revised description of the duties of the proffered position, along with the percentage of time devoted to each duty, as follows:

1. Plan, organize, present, and evaluate program of instruction in various subjects to kindergarten age students using the Montessori Method of teaching. (Overall Responsibility)
 - Deliver daily instruction in language, mathematics, writing, reading, science, art and music according to the Montessori Method of Teaching and interactive learning. (40%)
 - Design, administer and grade assessment test and assignments that reflect the Montessori Method of learning and assessment. (10%)
 - Foster, design and implement curricula and class activities based on the Montessori Method, including computer-based lessons, cooperate learning, interactive games and exploration activities. (20%)
 - Establish and implement alternative measures of assessment such as problem-based learning projects in class. (10%)
 - Lead teacher/parent interviews regarding the learning development of each child. (10%)
 - Engage in the training of fellow Montessori teachers. Keep familiar of new developments and studies of Montessori Method and attend in-service training a required. (10%)
2. Prepare, administer, and grade tests. Grades are measured individual levels of comprehension within a subject area. Organize Parent Teacher Conference to discuss each child Progress Report.
 - Patterns of Learning, behavior, and Social Interaction. (25%)
 - Reading, Readiness Skills. (15%)
 - Language Development. (25%)
 - Mathematical Development. (20%)
 - Music * Art * Science * Social Studies * Physical Education * Readiness Skills. (15%)



In response to the RFE, the petitioner also submitted, among other things, the following: (1) copies of several job postings; (2) a letter dated August 15, 2013 from [redacted] Director of Teacher Education Services, [redacted] (3) a letter from [redacted] Director, [redacted] (4) a letter from [redacted] Director of Training, [redacted] (5) printouts from the petitioner's website; (6) a list of the current employees of the petitioner and their credentials; and (7) copies of lesson plans prepared by the beneficiary during her Montessori training.

The director denied the petition on October 31, 2013, finding that the proffered position does not qualify as a specialty occupation. On appeal, counsel for the petitioner contends that the director's basis for the denial of the petition was erroneous.

II. LAW AND ANALYSIS

A. Standard of Proof

On appeal, counsel for the petitioner asserts that the "preponderance of the evidence" standard is relevant to this matter.

With respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or

petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Applying the preponderance of the evidence standard, we find that the petitioner has not established eligibility for the benefit sought.

B. Failure to Establish that Proffered Position Qualifies as a Specialty Occupation

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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 evidence in the record of proceeding establishes that performance of the particular proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The issue before us is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. Applying the preponderance of the evidence standard and based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that we address.² The petitioner asserted in the LCA that the proffered position falls under the job title "Montessori teacher" and the occupational title, "Kindergarten Teachers, Except Special Education" – SOC (ONET/OES) code 25-2012.

We reviewed the information in the *Handbook* regarding the occupational category "Kindergarten and Elementary School Teachers." However, the *Handbook* does not indicate that these positions comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/ooh/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

occupation.

The subchapter of the *Handbook* entitled “How to Become a Kindergarten or Elementary School Teacher” states the following about this occupational category:

Kindergarten and elementary school teachers must have a bachelor’s degree. In addition, public school teachers must have a state-issued certification or license. For information about teacher preparation programs and certification requirements in your state, contact the U.S. Department of Education.

Education

All states require public kindergarten and elementary school teachers to have at least a bachelor’s degree in elementary education. Some states also require kindergarten and elementary school teachers to major in a content area, such as math or science. Those who major in a content area typically enroll in their university’s teacher preparation program and also take classes in education and child psychology.

In teacher education programs, future teachers learn how to present information to young students and how to work with young students of varying abilities and backgrounds. Programs typically include fieldwork, such as student teaching.

Some states require kindergarten and elementary school teachers to earn a master’s degree after receiving their teaching certification.

Teachers in private schools do not need to meet state requirements. However, private schools typically seek kindergarten and elementary school teachers who have a bachelor’s degree in elementary education.

Licenses and Certification

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification. Those who teach in private schools are generally not required to be licensed.

Kindergarten and elementary school teachers are typically certified to teach early childhood grades, which are usually preschool through third grade, or elementary school grades, which are usually first through sixth grades or first through eighth grades.

Requirements for certification vary by state. However, all states require at least a bachelor’s degree. They also require completing a teacher preparation program and supervised experience in teaching, typically gained through student teaching. Some states require a minimum grade point average. States often require

candidates to pass a general teaching certification test, as well as a test that demonstrates their knowledge of the subject they will teach. Although kindergarten and elementary school teachers typically do not teach only a single subject, they may still be required to pass a content area test to earn their certification.

Teachers are frequently required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification.

Some alternative certification programs allow candidates to begin teaching immediately after graduation, under the supervision of an experienced teacher. These programs cover teaching methods and child development. After they complete the program, candidates are awarded full certification.

Other programs require students to take classes in education before they can teach. Students may be awarded a master's degree after completing either of these programs. For information about alternative certification programs, contact the National Center for Alternative Certification.

Advancement

Experienced teachers can advance to be mentors or lead teachers. These teachers often work with less experienced teachers to help them improve their teaching skills.

With additional education or certification, teachers may become school counselors, school librarians, or instructional coordinators. Some become assistant principals or principals, both of which generally require additional education in education administration or leadership. For more information, see the profiles on school and career counselors, librarians, instructional coordinators, and elementary, middle, and high school principals.

Important Qualities

Communication skills. Teachers must collaborate with teacher assistants and special education teachers. In addition, they need to discuss students' needs with parents and administrators.

Creativity. Kindergarten and elementary school teachers must plan lessons that engage young students, adapting the lessons to every student's learning style.

Instructional skills. Kindergarten and elementary school teachers need to be able to explain difficult concepts in terms that young students can understand. In addition, they must be able to get students engaged in learning and adapt their lessons to each student's needs.

Patience. Working with students of different abilities and backgrounds can be difficult. Kindergarten and elementary school teachers must respond [and] be patient when students struggle with material.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Kindergarten and Elementary School Teachers," <http://www.bls.gov/ooh/Education-Training-and-Library/Kindergarten-and-elementary-school-teachers.htm#tab-4> (last visited June 19, 2014).

The *Handbook* does not specify a requirement of a bachelor's degree in a particular major or academic concentration for private school kindergarten teachers. While the *Handbook* notes that all 50 States require *public* kindergarten and elementary school teachers to have at least a bachelor's degree in elementary education, it also notes that *private* school teachers do not need to meet state requirements. In addition, the *Handbook* states that private schools "typically seek kindergarten and elementary school teachers who have a bachelor's degree in elementary education." *Id.*

As indicated above, while private schools may typically seek kindergarten teachers with a bachelor's degree in elementary education, such a specialty degree is not required for entry into this particular occupation. Because the *Handbook* indicates that entry into the kindergarten teaching occupation at private schools does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

The petitioner indicated that it utilizes the Montessori Method of education, which is a particular method of education requiring specialized Montessori teacher training. As previously noted, the petitioner stated that the minimum educational requirement for the proffered position is a Bachelor's degree and a Montessori teaching credential. The petitioner repeatedly claims that a bachelor's degree is a necessary prerequisite for eligibility for a Montessori certificate. However, contrary to the petitioner's claim, the evidence of record indicates that a bachelor's degree is *not* in fact required for a Montessori certificate. The petitioner provided a printout from the section of the [redacted] website entitled "Become an [redacted] Montessori Teacher or Administrator," which states, in part, the following:

Credentials

[redacted] awards credentials to teach children in any of the following age levels: birth through 3, 2.5 – 6, 6 – 12, and 12 – 18. [redacted] also awards an administrator [sic] credential.

To be eligible to earn a full Montessori credential at an [REDACTED] affiliated teacher education program, you must hold a BA or BS degree (or higher). **If you have completed high school but do not hold a college degree, you are eligible to earn an associate credential at the Infant & Toddler and Early Childhood levels.**

You can read more about this in the [REDACTED] Teacher Education Programs page of this Web site.

(Emphasis added.) Upon review of the portion of the website entitled "[REDACTED] Affiliated Teacher Education Programs," it states the following, in pertinent part:

Montessori Credentials

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

The following credentials are awarded after graduation from an [REDACTED]

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

(Emphasis added.) [REDACTED] Affiliated Teacher Education Programs," available on the Internet at [http://\[REDACTED\]](http://[REDACTED]) (last visited June 19, 2014).

Furthermore, the petitioner stated that a Montessori teaching credential must be issued "within two years from the date of hire." Thus, the petitioner's employees have two years to complete the teaching credential. Upon review of the documentation, it does not appear that a baccalaureate (or higher degree) in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . .

that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. The evidence of record does not establish that the particular position proffered here 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 has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference its previous discussion on the matter.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner provided, among other things, the following: (1) a letter from [REDACTED] Director of Teacher Education Services, [REDACTED] dated August 15, 2013 (hereinafter, the "[REDACTED] Letter"); (2) a letter from [REDACTED], Director of the [REDACTED] dated August 13, 2013 (hereinafter, the "[REDACTED] Letter"); (3) a letter from [REDACTED] Director of Training for the [REDACTED] dated March 5, 2013 (hereinafter, the "[REDACTED] Letter"); and (4) copies of several job advertisements.

The [REDACTED] Letter states that to qualify for an [REDACTED] full credential, an individual must complete a "Bachelor's degree from an accredited US 4-year university/college or its equivalent," and "completion of a [REDACTED] accredited [REDACTED] affiliated Montessori course of study...." While this letter indicates that a

bachelor's degree is a prerequisite for the full [REDACTED] Montessori credential, it does not establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in parallel positions in organizations that are similar to the petitioner.

The [REDACTED] Letter confirms that the [REDACTED] located in [REDACTED] California, requires a bachelor's degree for admission," and states that the "area of study is not a factor, but our students are required to have an undergraduate degree in order to be admitted to our Montessori teacher training programs." The [REDACTED] Letter also states that "[e]xceptions are made only in very rare occasions when a potential student displays a myriad of other qualifications and experiences that can attest to their potential for success in the course." Thus, this letter confirms that a bachelor's degree is not always required to enter this credential program.

The [REDACTED] Letter explains that the [REDACTED] issues a Montessori Early Childhood teaching credential based on the following criteria:

1. The [REDACTED] Early Childhood Credential, for Candidates who enter the program with a bachelor's degree from an accredited institution;
2. The [REDACTED] International Early Childhood Credential, for candidates who enter the program with a bachelor's degree from an international institution; and
3. The [REDACTED] Associate Early Childhood Credential, for undergraduate candidates with verified completion of the high school level. The full Early Childhood credential will be issued by [REDACTED] when the holder of a valid Associate Credential verifies completion of a bachelor's degree.

Thus, it appears that a candidate can begin coursework for an [REDACTED] Early Childhood teaching credential prior to obtaining a Bachelor's degree.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of seven job advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions.³ Upon review of the job advertisements, we find that the petitioner fails to

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from seven job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar schools. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job advertisements supported the finding that the position of Montessori primary teacher at a private school required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected

establish that similar organizations to the petitioner routinely employ individuals with bachelor's degrees (or higher) in a specific specialty, or its equivalent, in parallel positions. Thus, for the reasons discussed in greater detail below, the petitioner's reliance upon the job advertisements is misplaced.

As previously mentioned, in the Form I-129 petition, the petitioner describes itself as a Montessori school (private preschool and elementary school), established in 1995, with 30 employees. The petitioner claims that it has a gross annual income of \$2,677,462 and net annual income of \$862,306. For the petitioner to establish that a school is similar, it must demonstrate that the petitioner and the school share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

The petitioner did not provide sufficient information to establish that each advertising employer and the petitioner share the same general characteristics, such as evidence of the level of revenue and staffing. In addition, the petitioner did not provide any independent evidence of how representative these job advertisements are of each advertising employer's recruiting history for the type of job advertised. Further, as each advertisement is only a solicitation for hire, it is not evidence of each employer's actual hiring practices.

The postings do not contain sufficient information regarding the duties of the advertised positions to ascertain if they are parallel to the proffered position. For instance, there is insufficient information regarding student-teacher ratio and whether the children attend half-day or full-day programs. Additionally, the job postings lack information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of these positions are the same or parallel to the proffered position. The advertisements provide insufficient information regarding the specific duties of the jobs to ascertain whether the positions are parallel to the proffered position. Notably, the petitioner did not supplement the record of proceeding to establish that the positions are parallel to the proffered position and located in organizations that are similar to the petitioner.

could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Moreover, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. We hereby incorporate our earlier finding that there are two types of early childhood Montessori "credentials," one of which does not require a bachelor's degree. We note that none of the job postings provided specifies which type of early childhood credential is required. Further, some of the job postings requesting a bachelor's degree do not specify a specific specialty. For example, the posting for an "[REDACTED] Montessori Primary Teacher" at the Montessori School [REDACTED] states an education requirement of "4-year degree." An entry requirement of at least a bachelor's degree without any specialization is inadequate to establish that the advertised positions qualify as specialty occupation positions. A petitioner must demonstrate that the proffered position requires a *precise and specific course of study* that relates directly to the duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The documentation provided does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

Specifically, the petitioner failed to demonstrate how the Montessori Primary Teacher duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree directly related to the occupation and did not establish how such a curriculum is necessary to perform the duties that it claims are so complex and unique. While some education courses may be beneficial in performing certain duties of a Montessori Primary Teacher position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate degree or higher in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

We also find that the LCA submitted by the petitioner in support of the instant petition is materially inconsistent with a claim that the petitioner has established the relative complexity or uniqueness required to satisfy this second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The LCA indicates a Level I (entry level) wage.⁴ This designation is appropriate for positions

⁴ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I

for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

By way of comparison, we note that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

The evidence of record does not establish that this position is significantly different from other private school "Kindergarten Teachers" such that it refutes the *Handbook's* findings that such positions do not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than positions in the pertinent occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other private school Kindergarten teacher positions that can be performed by a person without at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position.

wage rate is describes 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.

Id.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that 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 position.

In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

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

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in 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 proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

While the petitioner provided copies of the Bachelor's degrees, credentials and pay stubs for seven employees, the petitioner did not explain the positions these individuals hold for the petitioner, and only provided seven employees out of the 30 employees listed on the Form I-129.

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

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

Upon review of the record of the proceeding, the petitioner has not provided sufficient probative evidence to satisfy this criterion of the regulations. Moreover, there is insufficient evidence to establish that the duties of the proffered position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

Further, we hereby incorporate into this analysis our earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

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

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

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner

has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined.

Finally, the petitioner noted that previously the petitioner filed other H-1B petitions that were approved. However, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petitions cited by the petitioner were approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

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.