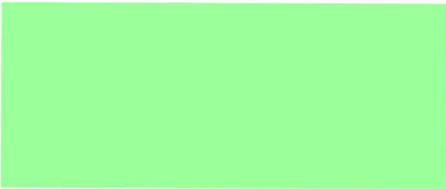


(b)(6)

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

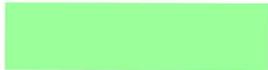


U.S. Citizenship
and Immigration
Services

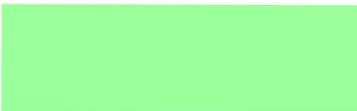


DATE: **MAY 15 2014**

OFFICE: VERMONT SERVICE CENTER

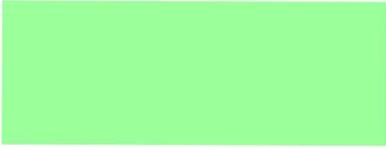
FILE: 

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 (hereinafter "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.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as an "After-School Program." In order to employ the beneficiary in what it designates as a "Program Coordinator/Education Administrator" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. THE LAW

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in

a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Program Coordinator/Education Administrator position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9031, Education Administrators, Preschool and Childcare from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position, the lowest of the four assignable wage-levels.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in general management from the European Business School – [REDACTED]. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in management.

Counsel also submitted a letter, dated March 2, 2013, from the petitioner's Program Director. That letter lists the following as the duties of the proffered position:¹

¹ The AAO observes that the record contains numerous additional letters, some submitted with the visa petition and some later, praising the beneficiary and the petitioner, including letters from the U.S. Senators and Congressmen representing the State of Mississippi. However, most of those letters shed no light on whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent and therefore do not constitute probative evidence as to whether the position is a specialty occupation, and they will not be further addressed.

- To plan and coordinate components of the [petitioner's] program; plan, prepare, and lead participants in after-school and extended year program consisting of academics, enrichment, and recreation.
- To plan opportunities for children's growth, focusing on student academic achievement and individual/family enrichment opportunities.
- To coordinate fundraising campaigns and events as well as raise donations for [the petitioner].
- To coordinate marketing efforts for [the petitioner].
- To liaison with community members and organizations to further expand the local opportunities for [the petitioner].

Neither that letter nor any other evidence submitted with the visa petition states that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or reveals, if it were to require such a specialized degree, what specific specialty the requisite degree or equivalent would be in.

On April 23, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted. The director specifically instructed the petitioner to submit a detailed statement explaining the beneficiary's proposed duties and responsibilities and stating the educational requirements for those duties.

In response, counsel submitted, *inter alia*, (1) three letters from employees of other non-profit organizations; (2) two pages of a document, which are labeled as pages three and four; and (3) a letter, dated July 4, 2013, from the petitioner's program director.²

One of the letters from other non-profits is undated and is from the CEO of the [redacted] in Greenville, Mississippi, who stated:

We have found that having attained the education level of at least a Bachelor's Degree in a relevant area of study is a fundamental indicator that a candidate is adequately prepared to take on such an important and difficult position. Therefore we expect that candidates for our Program Coordinator position have at least a Bachelor's Degree. Various disciplines offer the skills necessary to succeed in this position, but that one of the most critical factors for success is having a combination of passion, training and skills. It is especially important for the overall team to be well-rounded, while each of the individuals brings their specific and valuable contributions. Sometimes non-profits targeted at helping youth do not place as much importance on management or business backgrounds, but we have found that hiring individuals with this training brings great and indispensable benefits to the organization. Skills in

² As indicated above, the letters that do not discuss whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent will not be discussed.

fundraising, marketing, accounting, strategizing, etc. are incredibly valuable to the development and sustainability of a non-profit organization.

The writer did not indicate which fields of study he would consider "relevant" to the duties of a Program Coordinator.

Another letter, dated July 5, 2013, is from the Director of the [REDACTED] in Clarksdale, Mississippi, and states:

In the event that we were to hire a Program Coordinator, I know that the Board of Directors and staff of the [REDACTED] would all agree that we would not consider the application of anyone who had less than a Bachelor's Degree in a relevant area of study. The work of a Program Coordinator or a Director is very complex and requires a higher education with a background of business and management skills. Everyday dealings with fundraising, grant writing, basic business and accounting, marketing, and strategic planning are only the beginning of the responsibilities in which a person in this position must be proficient.

A person with a management background would benefit a non-profit organization, especially ones that are small are must [sic] deal with most of the business affairs with a small staff. In this case, there are a multitude of responsibilities that a program coordinator must manage on a daily basis including giving presentations and dealing with government entities, communicating with volunteers, donors, and supporters. Having an employee with a strong management background would be very advantageous for a non profit like [the petitioner].

Although the writer indicated that the duties of a program manager are varied and complex, that they require business and management skills, and that a non-profit like the petitioner would benefit from employing a person with a management background, he did not state that the position of program manager requires a minimum of a bachelor's degree in management, or in any other specific specialty, or its equivalent.

The third letter is undated and is from the Area Director of [REDACTED] in Clarksdale, Mississippi, who stated:

As an Area Director of a non-profit, I would not consider hiring staff that did not have a college education. The responsibilities of running a non-profit include recruiting investors, caring for investors, communicating the vision, various administrative responsibilities, and recruiting, training and caring for volunteers. These are simply the "behind the scenes" aspects of the job, and do not even include running the non-profit's programs.

The AAO observes that the writer did not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

As was stated above, counsel submitted two pages of a document labeled as pages three and four. What the balance of the document consisted of is unclear. However, those two pages are headed, "[The Beneficiary], Program Consultant." The pages are unsigned and unattributed, and state the following, apparently as a description of the beneficiary's present position, or of the work she would do if the visa petition were approved:

Accounting: 10% of time spent

- Keeping track of our expenses and income
- Documenting all financial transactions
- Corresponding with an accountant and fulfilling obligations towards the state and IRS

Marketing: 25% of time spent

- Segmenting target groups
- Identifying different target groups needs
- Structuring the marketing message according to the target group's needs
- Preparing communication materials (presentations, flyers, mailings, website, etc.)
- Setting up a database for donors, managing it
- Communicating personally with donors

Strategic Management: 20% of time spent

- Making recommendations on organizational structure
- Making recommendations for growth strategies
- Making recommendations on community involvement
- Translating visions into strategies and plans
- Getting people motivated and excited to support and implement the strategies

Personnel Management: 15% of time spent

- Recruiting volunteers
- Training and communicating with volunteers
- Addressing and solving issues with volunteers
- Hiring of a VISTA member
- Interviewing potential new staff members

Stress Management: 3% of time spent

- Designing self-care techniques
- Implementing self-care strategies for the [petitioner's] staff and volunteers
- Monitoring the stress level and making recommendations for improvements

Financial Management: 15% of time spent

- Budget planning (make, track and adjust budgets)

Making recommendations for savings
Making recommendations for investments
Making financial information accessible to others

Innovation & Quality Improvement 10% of time spent

Track program's overall success (grades, students' behavior, attendance, retention, etc.)
Track program's daily success (daily reports focusing on behavior, lessons, etc.)

Legal 2% of time spent

Advising on legal procedures (applying for incorporation, tax-exempt status)
Dealing with liability insurance, car insurance and possible claims

The AAO observes that those two pages differ markedly from the duties previously described in the March 2, 2013 letter from the petitioner's program director. Specifically, the first description of duties included duties related to planning and coordinating components of the petitioner's program; planning, preparing, and leading participants in after-school and extended year activities; planning opportunities for children's growth, focusing on student academic achievement and enrichment opportunities for individuals and families. No such duties appear in the revised duty description.

Further, the original description contains no duties pertinent to accounting, personnel management, stress management, financial management (other than fundraising), or legal aspects of the petitioner's operation.

A request for evidence is a request for clarification of the evidence submitted. It is not an invitation to modify the nature of the position offered such that it is more likely to qualify for specialty occupation status. In response to the RFE, the petitioner cannot offer a new position to the beneficiary, or materially change the position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Here, the petitioner appears to have deleted some duties unrelated to the beneficiary's bachelor's degree and to have greatly expanded on duties related, at least peripherally, to that degree.

The duty description provided in response to the RFE is not a clarification of the position duties originally described, but rather a material alteration of those duties, and will not be considered further. Instead, the visa petition will be adjudicated based on the duty description provided in the March 2, 2013 letter from the petitioner's program director that was submitted with the visa petition.

The July 4, 2013 letter from petitioner's program director states:

. . . [W]e would like to speak to the concern of whether a Bachelor's Degree is required to perform the duties of a Program Coordinator/Education Administrator at [the petitioner]. We need somebody very qualified to adequately fulfill this very complex role that draws on so many varied skills on a day to day basis. We would not ever consider hiring somebody with less than an excellent university education because we greatly care about the quality of the work that this person offers to our organization. Besides the specific areas of expertise that you learn about in college, there is also just a level of experience that comes with having a tight schedule, meeting deadlines, communicating with professors and fellow students and we rely on these skills every day.

The director denied the petition on August 9, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a Childcare Center Director as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter entitled Preschool and Childcare Center Directors.

On appeal, counsel submitted, *inter alia*, (1) an additional letter, dated September 20, 2013, from the CEO of the [redacted] in Greenville, Mississippi; (2) a letter, dated September 18, 2013, from the associate regional director of [redacted] in Starkville, Mississippi; (3) two undated letters from the petitioner's program director; and (4) a brief.

The September 20, 2013 letter from the CEO of the [redacted] states:

Our governing body, the [redacted] advocates in our 'Best Practices that child-care program directors possess an undergraduate degree among other qualifications. This is not a 100% have-to mandate, but the surest way to ensure program quality.

The [redacted] is a national leader in pushing for higher safe, effective out-of-school programs. [redacted] is not alone in advocating for program directors to have at the minimum a bachelor's degree. There are other nationally recognized organizations that embrace this requirement as well.

The September 18, 2013 letter from the associate regional director of [redacted] states:

[redacted] has a similar job position to program coordinator paralleling [the beneficiary's] current role: Area Director. The responsibilities of an Area Director are very complex including, but not limited to: recruiting, training, supervising and caring for volunteers, program planning and execution, fundraising, recruiting, training and leading a local board, marketing, accounting, excellent use of verbal and

written communication skills, strategic planning and administrative functions. Because of the skill and complexity of this job description, we almost exclusively hire college graduates to serve as area directors. Many of the above-stated skills require higher education and years of experience. In the event that a non-degree holding area Director is hired, it is because that person has years of experience and a very specific skill set suited for the job, but this occurrence is the exception and not the rule.

Again, neither the September 20, 2013 letter from the CEO of the [REDACTED] nor the September 18, 2013 letter from the associate regional director of [REDACTED] indicates that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

In one of her undated letters, the petitioner's program director provided a duty description that is substantially the same as that contained in the unsigned, unattributed two pages of a document discussed above. As was stated above, the amended duty descriptions provided in response to the RFE will not be considered. In that same undated letter, the petitioner's program director also provided a description of duties of two positions: (1) Major Gifts Officer and (2) Site Supervisor, both at another program, the [REDACTED]. She arranged the duties of those two [REDACTED] positions in a table opposite the duties of the proffered position. She provided no comparison, otherwise, of the complexity of the duties of the proffered position to the duties of those other two positions. Further, although she stated that the two positions at the [REDACTED] require bachelor's degrees, she provided no corroborating evidence in support of that assertion and, in any event, provided no indication that either of those positions requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

In her other undated letter, the petitioner's program director stated that the proffered position encompasses duties in eight categories: Accounting, Marketing, Financial Management, Strategic Management, Personnel Management, Stress Management, Innovation & Quality Management, and Legal. The AAO observes that those are the headings from the amended duty descriptions provided in response to the RFE, which, again, the AAO will not consider in adjudicating the visa petition. *Matter of Michelin Tire Corp., supra.*

The petitioner's program director further stated that the proffered position is so specialized and complex that the knowledge required to perform [its] duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty." However, she did not identify the specific specialty in which the requisite degree or equivalent must be.

In his appeal brief, counsel asserted that the classification of the proffered position as a childcare center director position was incorrect, and that the proffered position should be analyzed as a Social

and Community Service Manager position.³ Counsel stated, "[The duties of a Social and Community Services Manager] cannot reasonably be fulfilled by an individual possessing less than a bachelor's degree in a related specialized field."

As to the table listing the duties of the proffered position opposite the duties of the [REDACTED] positions, counsel stated:

We have taken the liberty of comparing the essential duties and responsibilities of [the beneficiary's] position with [the two positions at [REDACTED]]. This detailed comparison reinforces in the clearest terms the complexity of the proposed position and the fact that it requires "specialized knowledge" obtained through the attainment of a baccalaureate or higher degree in a specific specialty.

The "comparison" of the duties of the proffered position with the position at [REDACTED] consists of a table with the duties of the two positions at [REDACTED] listed opposite the revised list of duties attributed to the proffered position in the response to the RFE. As was noted above, that revised list of duties will not be considered, because it is inconsistent with the duty description previously provided. Further, the evidence does not contain a "comparison" of those duties to the duties of the [REDACTED] positions, only duty listings on a table.

As to the letters from other nonprofits, counsel stated:

As set forth in the letters of record from various professional educational administrators, the position of Program Coordinator/Education Administrator in the specific context of such a community-supported remedial program is one of those select specialist positions which invariably requires as a minimum a person holding a bachelor's degree in a related field such as business administration, social work or public administration.

Counsel also cited the *Handbook* as evidence that the proffered position qualifies as a specialty occupation position.

IV. ANALYSIS

As a preliminary matter, the AAO notes that neither the petitioner nor counsel have asserted that the proffered position qualifies as a specialty occupation position. In her March 2, 2013 letter, the petitioner's Program Director did not state that the proffered position requires a bachelor's degree, let alone a bachelor's degree in any specific specialty or the equivalent. In one of her undated letters, the petitioner's program director stated that the proffered position "cannot reasonably be fulfilled by

³ The AAO observes that, in the LCA, the petitioner stated that the proffered position corresponds to an "Education Administrators, Preschool and Childcare" position from O*NET. Counsel's assertion, made on appeal, that it is not such a position will be discussed below.

an individual possessing less than a bachelor's degree in a related specialized field," but she did not specify a related specialized field.

In the appeal brief, counsel stated that the proffered position "invariably requires as a minimum a person holding a bachelor's degree in a related field such as business administration, social work or public administration." That is not an assertion that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, as will be explained. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The assertion that an otherwise undifferentiated bachelor's degree in business administration would satisfy the educational requirement of the proffered position is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent, and does not, therefore, qualify as a specialty occupation position.

Consequently, the petitioner has not argued that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular

position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-9031, Education Administrators, Preschool and Childcare from O*NET. The AAO reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Preschool and Childcare Center Directors," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of Preschool and Childcare Center Directors:

What Preschool and Childcare Center Directors Do

Preschool and childcare center directors direct and lead staffs, oversee daily activities, and prepare plans and budgets. They are responsible for all aspects of their program.

Duties

Preschool and childcare center directors typically do the following:

- Supervise preschool teachers and childcare workers
- Hire and train new staff members
- Provide training and professional development opportunities for staff
- Establish policies and communicate them to staff and parents
- Develop educational programs and set educational standards
- Help staff resolve conflicts between children
- Assist staff in communicating with parents
- Meet with parents and staff to discuss students' progress
- Establish budgets and set fees for programs
- Ensure facilities are maintained and cleaned according to state regulations

Some preschools and childcare centers are independently owned and operated. In these facilities, directors must follow the instructions and guidelines of the owner. Sometimes, directors own the facilities, so they decide how to operate the facilities.

Other preschools and childcare centers are part of a national chain or franchise. The director of a chain or franchise must also ensure that the facility meets its parent organization's standards and regulations.

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

In addition, some preschools and childcare centers, such as Head Start programs, receive state and federal funding. Directors of these schools and centers must ensure that their programs, staff, and facilities meet state and federal guidelines. For example, they must ensure that the staff meets the educational requirements set by the Department of Health and Human Services.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Preschool and Childcare Center Directors," <http://www.bls.gov/ooh/management/preschool-and-childcare-center-directors.htm#tab-2> (last visited Apr. 16, 2014).

Most of the duties the petitioner's program director attributed to the proffered position in her March 2, 2013 letter are consistent with the duties of Preschool and Childcare Center Directors as described in the *Handbook*.⁵ On the balance, the AAO finds that the proffered position is a Preschool and Childcare Center Directors position as described in the *Handbook*, which is consistent with the petitioner's characterization of the proffered position, in the LCA, as an SOC 11-9031, Education Administrator, Preschool and Childcare.⁶

The *Handbook* states the following about the educational requirements of Preschool and Childcare Center Director positions:

How to Become a Preschool or Childcare Center Director

Education requirements range from a high school diploma to a college degree. Most states require these directors to have experience in early childhood education. Some states or employers require preschool and childcare center directors to have a nationally recognized certification such as the Child Development Associate (CDA) certification.

Education

Most states require preschool and childcare center directors to have at least a high school diploma, but some require an associate's or bachelor's degree in early childhood education. These degree programs teach students about child development, strategies to teach young children, and how to observe and document children's progress. Employers may prefer candidates who have a degree in early childhood education, or at least some postsecondary education in early childhood education.

Work Experience in a Related Occupation

⁵ Again, the AAO declines to consider the contradictory duty description submitted in response to the RFE.

⁶ If the duties of the proffered position were found to be inconsistent with the duties of a preschool or childcare educational administrator, as counsel asserted, that finding would lead to other consequences, which are addressed below.

Most states require preschool and childcare center directors to have experience in early childhood education. The amount of necessary experience varies by state.

Licenses, Certifications, and Registrations

Many states require childcare centers, including those in private homes, to be licensed. To qualify for licensure, staff must pass a background check, have a complete record of immunizations, and meet a minimum training requirement. Some states require staff to have certifications in CPR and First Aid.

Some states and employers require preschool and childcare center directors to have a nationally recognized certification. Most often, states require the Child Development Associate (CDA) certification offered by the Council for Professional Recognition. Obtaining the CDA certification requires coursework, experience in the field, and being observed while working with children.

Some states recognize the Child Care Professional (CCP) designation offered by the National Early Childhood Program Accreditation. Candidates for the CCP must be at least 18 years old, have a high school diploma, have experience in the field, take courses in early childhood education, and pass an exam.

Important Qualities

Business skills. Many preschool and childcare center directors own childcare centers and need to be able to manage their business effectively.

Communication skills. Preschool and childcare center directors need to inform parents and colleagues about the progress of the children. They need good writing and speaking skills to convey this information effectively.

Interpersonal skills. Preschool and childcare center directors must be able to develop good relationships with parents, children, and co-workers.

Leadership skills. Preschool and childcare center directors supervise staff, so they need good leadership skills to inspire staff to work diligently. They also must enforce rules and regulations.

Organizational skills. Directors need to maintain clear records about students and staff. In addition, they must be able to multitask when multiple people or situations require their attention.

Id. at <http://www.bls.gov/ooh/management/preschool-and-childcare-center-directors.htm#tab-4> (last visited Apr. 16, 2014).

The *Handbook* makes clear that Preschool or Childcare Center Director positions do not, as a category, require a minimum of a bachelor's degree or the equivalent, as it indicates that an associate's degree or even a high school diploma may suffice for some positions.

Further, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some preschool or childcare center director positions do not require such a degree.

To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring 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.

Finally, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of fundraising and planning school programs, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the evidence of record does not satisfy the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

In determining whether there is 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 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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.

The record does contain the letters, introduced above, from personnel of other nonprofit organizations. However, none of those letters assert that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent. Some state that such positions require a bachelor's degree, either universally, or generally. Some assert that a degree related to business administration or management would be helpful, but none suggest that it would be indispensable, or that it is generally required.

Further, those letters that assert that the educational requirements of such a degree may be satisfied by an otherwise unspecified bachelor's degree in business administration do not, for reasons explained in above in detail, indicate that such a position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. As was observed above, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. Cf. *Matter of Michael Hertz Associates, supra*. An educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is, therefore, not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions parallel to the proffered position that in organizations in the petitioner's industry that are otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so

complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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

Therefore, the evidence of record does not establish that this position is significantly different from other positions within this occupational category such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including high school and associate's degrees.

Furthermore, there is the issue off the LCA. As was noted above, the LCA submitted in support of the visa petition is approved for a Level I Education Administrator, Preschool and Childcare, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of preschool and childcare education administration. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some Preschool or Childcare Center Director positions do not require such a degree. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring 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.

As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁷

The record suggests that the petitioner has never previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁸ Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

Further, in her July 4, 2013 letter, the petitioner's program director stated, "Besides the specific areas of expertise that you learn about in college, there is also just a level of experience that comes with having a tight schedule, meeting deadlines, communicating with professors and fellow students and we rely on these skills every day."

Thus, although the petitioner's program director asserted that the petitioner requires a bachelor's degree for the proffered position, she did not indicate that the position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent. Additionally, she appeared to indicate that much of the purpose of requiring a bachelor's degree is to obtain a higher caliber of employee in

⁷ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. 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 a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

⁸ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. 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 a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

general, rather than because the proffered position requires specific skills taught in a specific curriculum.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. The requirement of a college degree with no specific major, for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.

For all of the reasons stated above, the petitioner failed to satisfy the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as planning and coordinating components of the petitioner's program; planning, preparing, and leading participants in after-school and extended year programs; planning opportunities for children's growth, focusing on academic achievement and enrichment opportunities; coordinating fundraising campaigns; coordinating marketing efforts; and establishing liaison with community members and organizations, contain no indication of a nature so specialized and complex that they require knowledge usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of preschool and childcare center director positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I preschool and childcare education administrator position, a position for a beginning level employee with only a basic understanding of such positions. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to such positions, especially as the *Handbook* indicates that some preschool and childcare education administrator positions require no such degree.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

V. ADDITIONAL ISSUES

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

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

[Italics added]

The LCA submitted was certified for employment of a preschool and childcare education administrator. It is not valid for employment in any position that does not correspond to a Level I Preschool and Childcare Education Administrator position as described at SOC code 11-9031 in O*NET.

The AAO has found that the proffered position is, in fact, a preschool or childcare center director position as described in the *Handbook*. However, if counsel were to prevail in his assertion, made on appeal, that the position is actually not a preschool or childcare center director position, then the visa petition would not be supported by a corresponding LCA, and the visa petition would be denied on that basis.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

VI. CONCLUSION

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision.

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

ORDER: The appeal is dismissed.