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U.S. Department of Homeland Security

U.S. Citizenship and Immigration Service

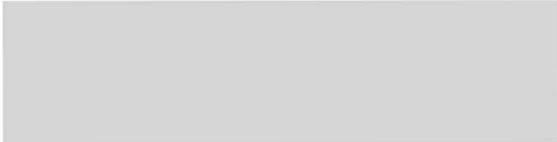
Administrative Appeals Office

20 Massachusetts Ave., N.W., MS 2090

Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **AUG 07 2015**

PETITION RECEIPT #: 

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

## I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a five-employee "Educational Center/Bookstore" established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as a part-time "Philosophy Instructor" position, the petitioner seeks to extend her status 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 evidence of record did not establish that the proffered position constitutes a specialty occupation. The petitioner now files this appeal, asserting that the Director's decision was erroneous.

We base our decision upon our 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 letter denying the petition; and (5) the petitioner's appeal and submissions on appeal.

As will be discussed below, we have determined that the Director did not err in her decision to deny the petition.<sup>1</sup> Accordingly, the appeal will be dismissed, and the petition will be denied.

## II. SPECIALTY OCCUPATION

Based upon a complete review of the record of proceeding, we find that the evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation.

### A. Legal Framework

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

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and

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

- (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 meet one of the following criteria:

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

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

therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

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

#### B. The Proffered Position

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title "25-3021, Self-Enrichment Education Teachers" from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level III position. On the LCA, the petitioner provided a North American Industry Classification System (NAICS) Code of "611699, All Other Miscellaneous Schools and Instruction."<sup>2</sup>

In a letter dated February 3, 2014, the petitioner described itself as "an alternative bookstore and education center . . . [which] offers literature, workshops, and presentations on philosophical, spiritual, health, metaphysical, nutrition and self-help issues." The petitioner stated that it "strive[s] for intellectual interplay between staff and customers and seek[s] to provide spiritual nourishment

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<sup>2</sup> U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "611699, All Other Miscellaneous Schools and Instruction," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Aug. 5, 2015).

and rejuvenation." The petitioner also stated that it "provide[s] daily workshops for ongoing events."

Regarding the proffered position, the petitioner explained that "[b]ased on customer interests and our weekly offerings, [the beneficiary] prepares and presents lectures on varying philosophical issues (religion, Sufism, spirituality, etc.)[.] She initiates, facilitates and moderate[s] discussions on a wide variety of philosophical topics." The petitioner further explained that the beneficiary "constantly plans, evaluates and revises course content, curricula, and methods of instruction."

In response to the Director's RFE requesting, *inter alia*, a more detailed description of the proffered position and documentation highlighting the nature, scope, and activity of the petitioner's business enterprise and the beneficiary's employment, the petitioner submitted a letter dated September 12, 2014. In this letter, the petitioner stated that its services are geared towards "individuals who sincerely seek knowledge, inner contentment and meaning in their life," and distinguished itself from others who offer "spiritual hype" such as "fortune telling, 'sensationalism,' exploitation or currently popular, [and] superficial spirit entertainment." The petitioner stated that it offers "advanced philosophy classes relating to metaphysics, ontology, and natural theology." The petitioner explained that these philosophy classes are taught by the beneficiary, and they include "a vast array of philosophical subjects, including the world, existence, objects and their properties, space and time, cause and effect, self-actualization and possibility." The petitioner described the range of services offered by the beneficiary as including "non-denominational and non-political instructional program offering philosophical education and universal knowledge, philosophical and spiritual mentoring, lectures, counseling and coaching services for individuals and groups, customized workshops, guest speakers and private study opportunities."

The petitioner elaborated upon the proffered position, as follows:

In her capacity as our part-time Philosophy Instructor [the beneficiary] has, since she joined us in October 2012, created curricula, prepared and delivered lectures, led Socratic, "round-table" explorations and developed, planned and facilitated special philosophic educational events, such as selecting and arranging for guest speakers to make special presentations to our students.

In explaining the professional nature and importance of these responsibilities, both in terms of our business' success and our students' spiritual development, it would be difficult to overstate the importance and necessity of [the beneficiary's] formal, graduate-level education in the discipline of Philosophy. While there are some who simply read a few philosophy books before holding themselves out as "Philosophy Instructors," [the beneficiary's] Master's degree in Philosophy has provided her with a rigorous foundation of theoretical and practical philosophic knowledge that renders her a wellspring of knowledge that our customers return to, week after week.

[The beneficiary's] formal education in Philosophy has provided her with the ability to apply, in a practical and highly individualized way, the theoretical principles of philosophy that her students seek in seeking meaning and fulfillment in their intellectual, emotional and physical lives. Specifically, the areas of philosophical thought that [the beneficiary] imparts to her students include Ontology (the study of being and existence, including the definition and classification of entities, physical or mental, the nature of their properties, and the nature of change), Natural Theology (the study of a God or Gods; involves many topics, including among others the nature of religion and the world, existence of the divine, questions about Creation, and the numerous religious or spiritual issues that concern humankind in general), Universal Science (the study of first principles, such as the law of noncontradiction, which Aristotle believed were the foundation of all other inquiries), and C (the study of the totality of all phenomena within the universe).

The ability to apply, in a practical and meaningful way, philosophical theories dating back centuries, if not millennia, to the present-day hopes, fears, and struggles of our clientele requires not only a high level of intellectual and intuitive awareness; it also requires years of formal study in the discipline of Philosophy in order to understand this vast array of philosophical traditions deeply enough to make sense of them and apply them in the modern world.

The petitioner then provided a more detailed description of the job duties, as follows:

1. CREATE CURRICULUM FOR PHILOSOPHICAL PROGRAM (25%)

The Philosophy Instructor develops the overall, long-term curriculum for the program to provide insight into much-needed knowledge of the understanding of life, our role in this planet and in the Universe at large. For example, the Philosophy Instructor investigates and determines the inclusion of courses in God and Life in the Universe, Man as Body/Soul/Spirit entity, Instrumental Trans-Communication, New Aspects of Medicine, Health, Consciousness, Spiritual Leadership, General Global Concerns

2. PREPARE & DELIVER CLASSES ON PHILOSOPHICAL TOPICS (60%)

The Philosophy Instructor prepares weekly lectures on philosophical topics including:

- Foundation – Basic Knowledge about the study of philosophy, its history and application to modern contemporary life
- New Knowledge about Death and the Transition Process
- The 8 Levels of Consciousness
- The Connection between Karma, Fate, Accidents and Free Will
- Successful Application of Medial and other Energy-Related Abilities
- Soul and its Constellations, Soul Families and Soul Polarities
- Spirit and Soul Differences

- High and Ascended Masters, Avatars and Yogis: their Roles and Purpose
- God the Almighty and his Intentions – How to deal with Universal Knowledge
- Integration and Application of New Spiritual Knowledge for Everyday Living

Sessions are held weekly. The Philosophy Instructor formally plans each session, including a lecture, selected reading materials, and interactive/participatory exercises; answer questions of students; facilitate "Socratic-method" discussions.

The Philosophy Instructor develops, executes and analyzes student performance evaluations and works individually with students as well.

### 3. DEVELOP, PLAN & FACILITATE SPECIAL EVENTS (15%)

The Philosophy Instructor researches, coordinates, organizes and executes special events for the students of the philosophy program, as well as prospective members. This includes special public introductory lectures (to prospective students to increase awareness of and interest in the philosophy program), seminars, guest speakers, and individual coaching.

The petitioner concluded that the "intricate, complex, professional duties detailed above can only be accomplished with a person who holds a minimum of a Bachelors [*sic*] degree in Philosophy, or its equivalent."

### C. Analysis

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

Upon review, we find insufficient evidence in the record of proceeding to corroborate the petitioner's descriptions of its business operations and the proffered position. The petitioner states that it is an "alternative bookstore and educational center." However, the petitioner has not sufficiently explained and documented the "educational center" aspect of its operations. For instance, the petitioner provided little details about its educational offerings such as the number,

size, and length of courses offered, student characteristics, and program prerequisites and requirements (if any). There is insufficient corroborating evidence of the petitioner's formal philosophy or other classes, such as copies of curricula, program materials, lesson plans, reading materials, and student performance evaluations. The petitioner also stated that its services include "non-denominational and non-political instructional program offering . . . universal knowledge, philosophical and spiritual mentoring, lectures, counseling and coaching services for individuals and groups, customized workshops, guest speakers and private study opportunities." The petitioner did not further explain and document the nature of its mentoring, counseling, and coaching services, nor did the petitioner clarify how these offerings are related to the petitioner's "educational center."<sup>3</sup>

In addition, the petitioner's descriptions of the proffered position lack sufficient detail to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require. The petitioner stated that the beneficiary's lectures will cover philosophical topics such as "The 8 Levels of Consciousness," "Successful Application of Medial and other Energy-Related Abilities," "Soul and its Constellations, Soul Families and Soul Polarities," "High and Ascended Masters, Avatars and Yogis: their Roles and Purpose," and "God the Almighty and his Intentions – How to deal with Universal Knowledge." The petitioner also identified these topics as corresponding to broad areas of philosophical thought, including Ontology, Natural Theology, Universal Science, and "C." However, merely identifying the broad topics and areas of philosophical thought that are addressed, without more, is insufficient. The petitioner has not provided detailed information about the content of these classes and other relevant factors, such that we can discern the level of complexity of the proffered duties and the associated applications of specialized knowledge that their actual performance would require. We again highlight the lack of corroborating evidence, such as formal program materials and lesson plans, that would help support the petitioner's characterization of these classes as "advanced."

Moreover, the petitioner has not explained which specific course(s) of study would provide the necessary knowledge of "The 8 Levels of Consciousness," "Successful Application of Medial and other Energy-Related Abilities," "Soul and its Constellations," and "High and Ascended Masters, Avatars and Yogis," for example, necessary to conduct the weekly philosophy classes. In addition, there is no explanation as to how these courses would represent an established curriculum leading to a baccalaureate degree in Philosophy.

Overall, there is insufficient evidence in the record of proceeding to corroborate the petitioner's descriptions of its business operations and the proffered position. A crucial aspect of this matter is whether the petitioner has adequately described and documented the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly

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<sup>3</sup> The NAICS code of "611699, All Other Miscellaneous Schools and Instruction" is for "establishments primarily engaged in offering instruction." There is insufficient indication that this NAICS code is appropriate for establishments offering mentoring, counseling, or coaching services. See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Aug. 5, 2015).

specialized knowledge attained through at least a baccalaureate degree in a specific discipline. This has not been established here.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

*A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position*

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree 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.

We recognize the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> We reviewed the information in the *Handbook* regarding the occupational category "Self-Enrichment Education Teachers" and note that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

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

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O\*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited Aug. 5, 2015).

Thus, the narrative of the *Handbook* reports that there are some occupations for which only summary data is prepared but detailed occupational profiles are not developed. Accordingly, in certain instances, the *Handbook* is not determinative.<sup>5</sup> When the *Handbook* does not support the

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<sup>4</sup> All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>.

<sup>5</sup> While the *Handbook* is not determinative in this matter, we nevertheless note that the *Handbook* summary data indicates that the occupational category "Self-Enrichment Education Teachers" falls into the group of

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

The petitioner submitted a letter from Professor [REDACTED] Computer Science Department, [REDACTED] dated April 5, 2012.<sup>6</sup> Professor [REDACTED] concluded that, based upon his review of the petitioner's petition and the petitioner's website, the proffered position "constitutes a specialty occupation which calls for a minimum of a Bachelor's degree in Philosophy." More specifically, Professor [REDACTED] stated that "[i]t is the seriousness of purpose with which the petitioner characterizes [its philosophy] program that clearly marks this position as a specialty occupation." He also stated:

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occupations for which a high school diploma or equivalent is the typical entry-level education. The full-text of the *Handbook* regarding this occupational category is as follows:

Teach or instruct courses other than those which normally lead to an occupational objective or degree. Courses may include self-improvement, nonvocational, and nonacademic subjects. Teaching may or may not take place in a traditional educational institution. Excludes "Fitness Trainers and Aerobics Instructors" (39-9031). Flight instructors are included with "Aircraft Pilots and Flight Engineers" (53-2010).

- 2012 employment: **316,200**
- May 2012 median annual wage: **\$35,320**
- Projected employment change, 2012-22:
- Number of new jobs: **43,900**
- Growth rate: **14 percent (about as fast as average)**
- Education and training:
  - Typical entry-level education: **High school diploma or equivalent**
  - Work experience in a related occupation: **Less than 5 years**
  - Typical on-the-job-training: **None**

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited Aug. 5, 2015).

<sup>6</sup> Professor [REDACTED] states that he has a "Ph.D. in Philosophy from the [REDACTED]"

The holder of the position will be tasked with creating and delivering a long-term curriculum for a philosophy program addressing elemental philosophical matters such as "our role on this planet, God and Life in the Universe, Man as Body/Soul/Spirit." The anticipated components of program study include units in "New Knowledge about Death and the Transition Process," "The 8 Levels of Consciousness," and "High and Ascended Masters and Yogis: their Roles and Purpose of God the Almighty and his Intentions."

These duties require a high level of knowledge, study and expertise in various world philosophies – ancient and contemporary, spiritual and secular, intellectual and intuitive. The duties are complex and specialized, exceeding industry or normal standards, such that a Bachelor's degree in Philosophy or equivalent is a prerequisite for entry into the proffered position. The duties, responsibilities and goals of this position make it a key focus and critical performer that can accomplish the employer's goal of increasing business and market share.

However, we accord little probative weight to [REDACTED] opinion regarding the proffered position. [REDACTED] opinion does not appear to be based upon sufficient information about the position proposed here. [REDACTED] does not relate any personal observations of the petitioner's operations and/or the classes the beneficiary has instructed, nor does he state that he has reviewed any actual work products created by the beneficiary. There are no screen-shots or representations of the actual contents of the petitioner's website which he claimed to have reviewed. We note that [REDACTED] letter is dated April 5, 2012, yet the instant petition and supporting documentation, including the petitioner's letter describing the duties of the proffered position, are dated February 2014. It is thus not clear what job descriptions he considered as the basis for his conclusions.<sup>7</sup>

Nor does [REDACTED] opinion otherwise demonstrate a sound factual basis for his conclusions. That is, [REDACTED] does not sufficiently explain the factual basis for his conclusions about the proffered position's duties and educational requirements. For instance, he does not describe in factual detail the content of the program materials being discussed, so as to corroborate his

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<sup>7</sup> Each petition filing is a separate proceeding with a separate record. See *Hakimuddin v. Dep't of Homeland Sec.*, No. 4:08-cv-1261, 2009 WL 497141, at \*6 (S.D. Tex. Feb. 26, 2009); see also *Larita-Martinez v. INS* 220 F.3d 1092, 1096 (9th Cir. 2000) (stating that the "record of proceeding" in an immigration appeal includes all documents submitted in support of the appeal). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

Thus, while the petitioner has asserted that "[n]either the beneficiary's professional and educational requirements, nor the complexity of this specialty occupation's duties, have changed since the prior approval," the petitioner has not submitted sufficient evidence to corroborate this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

statement that "[i]t is the seriousness of purpose with which the petitioner characterizes [its philosophy] program that clearly marks this position as a specialty occupation." He also does not explain in sufficient detail why the proffered duties require the theoretical and practical application of a body of highly specialized knowledge, such that a bachelor's degree in Philosophy (or its equivalent) is required to perform them. Similar to the petitioner's letter, [REDACTED] letter lists some of the broad philosophical areas of thought that the program addresses, but does not identify which particular course(s) of study provided such knowledge, and how these courses represent an established curriculum leading to a baccalaureate degree in Philosophy. As such, his statements that the proffered duties "require a high level of knowledge, study and expertise in various world philosophies" and are "complex and specialized, exceeding industry or normal standards," are conclusory statements that have little probative value. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Accordingly, we conclude that [REDACTED] opinion letter is not probative evidence to establish the proffered position as a specialty occupation. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

The record lacks sufficient evidence from objective, authoritative sources to support a finding that the particular position proffered here, would normally have such a minimum, specialty degree requirement, or its equivalent. The duties and requirements of the position as described in the record of proceeding are insufficient to establish that this particular position proffered by the petitioner 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).

*The requirement of a baccalaureate or higher degree in a specific specialty,  
or its equivalent, is common to the industry in parallel  
positions among similar organizations*

Next, we will review the record regarding 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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 evidence does not demonstrate that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there submissions from professional associations, firms, or individuals in the petitioner's industry.

The petitioner submitted several vacancy announcements for adjunct philosophy instructor positions posted by various colleges and universities. These vacancy announcements do not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). These announcements were not posted by organizations in the petitioner's industry. In response to the RFE, the petitioner asserted that "[t]he 'industry' for this position is the instruction of philosophy. That is, whether the instruction takes place in a school, in a church or in a bookstore or educational center, the *profession* for this position is Philosophy." The petitioner's assertion is unpersuasive, however, as it confuses the elements of the petitioner's industry with whether the positions are parallel (i.e., the nature or "profession" of the proffered position). The plain language of the regulation makes clear that the degree requirement must be common both to the industry *and* in parallel positions. In addition, the petitioner did not submit sufficient evidence establishing that it shares the same general characteristics with the advertising organizations so as to establish that the organizations are similar.<sup>8</sup> There is also insufficient evidence to conclude that the proffered position is parallel to the posted positions, considering the lack of substantive explanation and documentation regarding the petitioner's philosophy classes.

On appeal, the petitioner submitted a sampling of author events hosted by other independent bookstores. These documents do not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. There is insufficient evidence to establish that these author events are parallel to the proffered position. The submitted documents provide brief summaries of the published books and the authors' biographies; there is no information about the content and other relevant characteristics of the author presentations. There is thus insufficient evidence to conclude that these author events are "professional quality lectures on intellectually challenging and complex topics" parallel to the philosophy classes given by the beneficiary, as claimed. Moreover, there is no information about the educational qualifications of the authors. It is therefore not clear how these documents establish that the "degree requirement is common to the industry" under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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).

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<sup>8</sup> 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, the particular scope of operations, and 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 an organization is similar without providing a legitimate basis for such an assertion.

*The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent*

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

We find that the petitioner has not sufficiently developed relative complexity or uniqueness as aspects of the proffered position. In this regard, we refer to our earlier discussions and findings about the record's vague and uncorroborated descriptions of the petitioner's educational center, philosophy classes, and other services. We also refer to our earlier discussions about the lack of adequate explanation and documentation of why the duties of the proffered position would require a bachelor's degree in philosophy.

With regard to this criterion, the petitioner repeatedly refers to its previous H-1B approval for the same position. However, a prior approval 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). USCIS is not required to approve 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). 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).

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

*The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

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

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring a degree in a specific specialty, or its equivalent, in its prior recruiting and hiring for the position.<sup>9</sup> Additionally, the record must establish that a petitioner's

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<sup>9</sup> While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that

imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<sup>10</sup>

Here, the petitioner does not indicate that it has a prior history of recruiting and hiring for the instant position. With respect to the petitioner's degree requirement, the petitioner attested that "[the beneficiary's] Master's degree in Philosophy has provided her with a rigorous foundation of theoretical and practical philosophic knowledge that renders her a wellspring of knowledge that our customers return to, week after week." The petitioner further emphasized that the beneficiary's professional services have "dramatically enhanced the petitioning business' profitability, reputation and returning customer rate." However, these explanations do not directly address the issue of why the 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. As discussed above, the petitioner has not adequately explained why its philosophy classes in topics such as "The 8 Levels of Consciousness" and "High and Ascended Masters and Yogis," or its other spiritual mentoring, counseling, and coaching services, would require a bachelor's degree in philosophy.

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

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the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. *See Caremax Inc. v. Holder*, 40 F.Supp. 3d 1182, 1189 (N.D. Cal. 2014) ("If this is [the petitioner's] first-ever public relations specialist position, then the company cannot claim that it typically requires a bachelor's degree in English.")

<sup>10</sup> A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is whether the 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.

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

*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*

We find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

As reflected in this decision's earlier discussions, the record of proceeding is insufficient to establish the true scope of the petitioner's operations and the duties of the proffered position. As a result of the uncorroborated and relatively abstract nature of the duties as described, the record of proceeding does not establish their nature as so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or the equivalent. The evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

### III. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the proffered position, as described, more likely than not constitutes a specialty occupation.<sup>11</sup> Accordingly, the appeal will be dismissed and the petition will be denied.

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.

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<sup>11</sup> As this matter is dispositive of the petitioner's appeal, we will not address any of the additional deficiencies we have identified on appeal.