



U.S. Citizenship
and Immigration
Services

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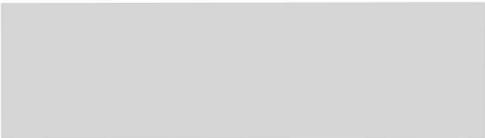
DATE: AUG 18 2015

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:



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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**

Thank you,

Ron ROSENBERG
Chief, Administrative Appeals Office

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

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a mass communication company, established in [REDACTED] with 2 employees. In order to employ the beneficiary in what it designates as a public relations coordinator, 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 has not established that it would employ the beneficiary in a specialty occupation position.¹ On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

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

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

II. SPECIALTY OCCUPATION

A. The Law

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

¹ The director also found that the beneficiary did not maintain her nonimmigrant status in the United States. However, we have no jurisdiction over this matter, as issues surrounding the beneficiary's maintenance of nonimmigrant status are within the sole discretion of the director. Accordingly, we will not address this issue.

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

- (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 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 petitioner indicated on the Form I-129 that it seeks the beneficiary's services as a public relations coordinator to work on a part-time basis for \$578.10 per week.

In a letter of support dated March 28, 2014, the petitioner stated that the beneficiary will be responsible for the following duties:

As a Public Relations Coordinator, [the beneficiary] is expected to engage in promoting or creating an intended public image for our company; to write and select material for release to various communications media; respond to requests for information from the media or designate an appropriate spokesperson or information source; study the objectives, promotional policies, or needs of our company to develop public relations strategies that will influence public opinion or promote ideas or services; establish or maintain cooperative relationships with representatives of

community, consumer, employee, or public interest groups; coach employees in effective communication with the public or with customers; confer with CEO to identify trends or key group interests or concerns or to provide advice on business decisions; arrange public appearances, lectures, contests, or exhibits for clients to increase service awareness or to promote goodwill; consult with advertising agencies or staff to arrange promotional campaigns in all types of media for our company.

The position involves coordinating, supervising, and managing; a considerable amount of work-related skill, knowledge, or experience is needed for this occupation. The complex nature of these job duties requires a professional who holds at least a Bachelor's Degree in Public Administration, marketing, business and related major. All these job requirements indicate this position is specialty occupation.

In response to the RFE, the petitioner provided more expanded description of the beneficiary's duties on a daily basis, which include: manage public relations of [the petitioner]; meet with clients and plan events and public relations campaigns; communications with media; establish and maintain relationship with government figures, business leaders, and community groups; events organizing and management; find and sign potential client; manage other employee's public relations activities; and market research.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Public Relations Specialists" – SOC (ONET/OES) Code 27-3031, at a Level I (entry-level) wage.

C. Analysis

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)(1) which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.³ The *Handbook* states the following regarding the educational requirements necessary for entrance into this field:

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2014-15 edition available online.

Public relations specialists typically need a bachelor's degree. Employers prefer candidates who have studied public relations, journalism, communications, English, or business.

Education

Public relations specialists typically need a bachelor's degree in public relations, journalism, communications, English, or business. Through such programs, students produce a portfolio of work that demonstrates their ability to prospective employers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Public Relations Specialists, at <http://www.bls.gov/ooh/media-and-communication/public-relations-specialists.htm#tab-4> (last visited on August 7, 2015).

The *Handbook* does not support the assertion that a baccalaureate or higher degree in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. While the *Handbook* states that employees typically need a bachelor's degree, it also states that "employers prefer candidates who have studied public relations, journalism, communications, English or business." Therefore, the *Handbook's* recognition that public relations specialists can come from a variety of education backgrounds including a general purpose degree such as business suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

Specifically, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Thus, while a general-purpose degree such as business or a degree in any discipline may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Id.* Accordingly, as the *Handbook* indicates that working as a public relations specialist does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

The petitioner cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge required to perform the duties, and not the name of the Beneficiary's degree is what matters." We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." However, the petitioner did not establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

Further, the petitioner also cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) to claim that "to read the law as only recognizing specialty occupations where there is a specific degree with a title tailored to the name of the occupation is too narrow a reading of the law and not in keeping with its intent." However, we note that in *Tapis Int'l v. INS*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's

degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for "various combinations of academic and experience based training." *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that "[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience." *Id.* at 177. In this case, the issue is not whether the beneficiary's experience is equivalent of a specialized baccalaureate degree.

In any event, the petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*⁴ or *Tapis Int'l v. INS*. We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

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

In response to the RFE and also on appeal, the petitioner states that O*NET assigns the public relations specialists occupation a Job Zone Four rating. According to O*NET, "[m]ost of these occupations require a four-year bachelor's degree, but **some do not**" (emphasis added). However, O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or

⁴ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

higher degree, but one in a specific specialty that is directly related to the proffered position. Thus, a designation of Job Zone Four does not demonstrate that at least a bachelor's degree in a *specific specialty* is normally the minimum requirement for entry, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The record of proceeding also contains evaluations from [redacted] of [redacted] and [redacted] at [redacted]. We note that [redacted] evaluation "reflects the academic credentials as well as the work experience attained by [the beneficiary] during the course of her academic and professional career"; therefore, it is limited to reviewing the beneficiary's credentials, and does not discuss whether a bachelor's degree in a specific specialty or its equivalent is required for the proffered position.

In a letter dated August 25, 2014, [redacted] stated "in the matter of the employment position of Public Relations Coordinator offered by [the petitioner], it is my professional and experienced opinion that the described job duties are of a professional nature and require preparation at the Bachelor's Degree level in Public Relations, Marketing, or a related area at a minimum." We reviewed the letter in its entirety. However, as discussed below, the letter from [redacted] is not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

We note that [redacted] provided a bullet point list of the job duties, which is virtually verbatim from the petitioner's job duties submitted in response to the RFE. Upon review of the opinion letter, there is no indication that [redacted] possesses any knowledge of the petitioner's proffered position and its business operations beyond the information provided by the petitioner. [redacted] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. There is no evidence that [redacted] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

[redacted] asserts a general industry educational standard for public relations coordinator positions without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, she does not provide a substantive, analytical basis for her opinion and ultimate conclusion. Her opinion does not relate her conclusion to specific, concrete aspects of the petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that she attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of her opinion.

In the opinion letter, [redacted] does not cite specific instances in which her past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that she has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no

indication of recognition by professional organizations that she is an authority on those specific requirements.

asserts that "the nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of a Bachelor's Degree in one of these fields." further claims that the success of the petitioner is "largely dependent on the ability and expertise of a Public Relations Coordinator ...as the specialized duties of this individual directly and indirectly affect the company's operations, revenues and profits, and ultimately the overall success of the company." However, there is no indication that the petitioner advised that the proffered position is characterized as a low, entry-level public relations coordinator, who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited exercise of judgment. It appears that would have found this information relevant for her opinion letter. Without this information, the petitioner has not demonstrated that possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the educational requirements based upon the job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by is not probative evidence to establish the proffered position as a specialty occupation. The conclusion reached by lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. There is an inadequate factual foundation established to support the opinion and the opinion is not in accord with other information in the record. Therefore, the letter from does not establish that the proffered position is a specialty occupation.

We may, in our discretion, use 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). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

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

*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 sharing all three characteristics of being (1) within 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 petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. This, we incorporate by reference the previous discussion on this matter. Also, there are no submissions from professional associations or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. While we acknowledge that the petitioner submitted a letter from [REDACTED] as discussed above, [REDACTED] letter is not probative evidence to establish that the degree requirement is common to the industry.

Thus, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

Next, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In response to the RFE, the petitioner asserts that "one of the most complex and specialized duty of Public Relations Coordinator is the organizing and managing of public relations events for company clients." The petitioner explained that the duty includes "marking arrangement for the location of the event," "invitations-finding and arranging for speakers and/or presenters," and "logistics-ensuring that all items such as electronic equipment, furniture, catering, etc. that should be included at the event are taken care of." In support, the petitioner submitted documents relating to its

operations including a business plan and photographs of various events. We reviewed the record in its entirety and find that while the documents provide some insight regarding the petitioner's business operations, the petitioner has not explained how the documents or the duties such as finding and arranging for speakers or managing logistics such as equipment and furniture establish that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. The petitioner stated that the beneficiary is qualified for the position based on her degree which is the equivalent of a Bachelor's Degree in Public Relations from an accredited US college or university. However, 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 it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the 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 proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Public Relations Specialists" at a Level I wage.

In accordance with the relevant DOL explanatory information on wage levels, a Level I position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to only have a basic understanding of the occupation. The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.⁵ For example, a Level IV (fully competent) position is

⁵ The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a

designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."⁶ The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty is not required for the proffered position.

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

The employer normally requires at least a bachelor's 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 requires the employer to demonstrate 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 the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.

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

position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

⁶ For additional information regarding wage levels as defined by DOL, 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.

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner did not provide information regarding its hiring history for the position of public relations coordinator. Therefore, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent. 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).

The nature of the specific 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 a specific specialty, or its equivalent

Next, 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.

The petitioner claims that the nature of the specific duties of the position in the context of its business operations 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 a specific specialty, or its equivalent. We reviewed the petitioner's statements regarding the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

The petitioner submitted a letter from [REDACTED] Chairman and Chief Executive officer of [REDACTED] and former candidate for mayor of [REDACTED] [REDACTED] claimed that the beneficiary organized and produced several events during his campaign and that the work she performed required "'specialized knowledge' and 'sophisticated ability' in the field of public relations." However, [REDACTED] letter does not discuss the duties of the proffered position and does not claim that the nature of the specific duties is so specialized and complex that it requires a bachelor's degree or its equivalent in a specific specialty.

Further, we hereby incorporate our earlier discussion and analysis regarding the duties of the

proffered position, and the designation of the proffered position in the LCA as a Level I position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage. The petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has not established 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.⁷

III. CONCLUSION AND ORDER

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.

⁷ Since the identified basis for denial is dispositive of the petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.