



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 25 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](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, California Service Center, denied the nonimmigrant visa 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 seven-employee "Retail and Wholesale Clothing Export and Supplier" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Graphic/Web Designer" position, the petitioner seeks to classify him 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 as abandoned because the petitioner did not respond to a request for evidence (RFE) within the allotted time period. The petitioner then filed a motion to reopen. In a letter submitted with the motion to reopen, counsel for the petitioner stated that the RFE issued on May 29, 2014 was not received by counsel or the petitioner. Counsel requested that the Director, thus, reopen the proceeding and allow the petitioner to comply with that RFE. The motion was granted and the petitioner was provided another opportunity to respond to the May 29, 2014 RFE.

The Director ultimately denied the petition finding that (1) the visa petition was filed more than six months prior to the beginning of the period of requested employment, and (2) the evidence was insufficient to establish that the proffered position qualifies for classification as a specialty occupation position.

On appeal, the petitioner asserts that the Director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's RFE; (3) the Director's denial letters; and (4) the two Notices of Appeal or Motion (Form I-290B) and the petitioner's submissions on motion and appeal. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

## II. THE PROFFERED POSITION

The petitioner claims in the Labor Condition Application (LCA) submitted to support the visa petition that the proffered position is a "Graphic/Web Designer" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-1024, Graphic Designers, from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a wage Level I position.

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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).

In a letter, dated March 26, 2013, the petitioner described the proffered position as follows:

The nature of the duties of Graphic/Web Designer with our company, as described herein, is so specialized and complex that a Bachelor's degree or equivalent is mandatory.

In this professional capacity, our Graphic/Web Designer will manage, develop, and update a website for our new Japanese retail market (Yahoo, Rakuten, etc.) that will enable customers to view products discretely and purchase goods safely through secure servers (highly secure mainframe computers usually belonging to banks or merchants) using an internationally recommended secure system called "PayPal" for all sales. He will work with marketing professionals to make our website attractive to customers.

The Graphic/Web Designer will be creating transaction-oriented websites, online catalogs, shopping cart software, website search capabilities and forms. He will be responsible for the delivery, maintenance and marketing of our e-commerce websites. He will also create and send email magazines, manage data entry, web marketing and plan and implement sales promotion projects.

The Graphic/Web Designer will also develop an in-house virtual conference system that will enable the conduction of online interactive sessions between teachers in the United States and students in Japan, also collaborating with engineers. His tasks include designing and participating in the back-end programming of the system.

He will research, write, and edit our website content to make sure the information is up to date and ensure that items in our inventory and services are available. He will prepare sketches or layouts, by hand or with the aid of a computer, to illustrate the vision for the design, select colors, artwork, photography, animation, style of type, and other elements for our website. He will use specialized computer software packages to help create layouts and design elements and to program animated graphics for our website.

Our Graphic/Web Designer will also maintain hypertext links to assure that they are active and current. He will also ensure that our websites are accessible using different browser technologies. Furthermore, he will perform search engine optimization tasks.

The letter further stated, "To qualify for this challenging position, a Graphic/Web Designer must have a Bachelor's degree in Graphic Design, Fine Arts, Science, Technology, Engineering, Architecture, or a related field."

### III. SPECIALTY OCCUPATION

We will first address the specialty occupation basis of denial. The issue is whether the evidence of record establishes that the petitioner will employ the beneficiary in a specialty occupation position.

#### A. Legal Framework

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 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. Analysis

We note, initially, that the petitioner's president stated that the proffered position requires "a Bachelor's degree in Graphic Design, Fine Arts, Science, Technology, Engineering, Architecture, or a related field." A requirement of a degree in any subject within that wide array is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, mark a position as a specialty occupation position.

A petitioner must demonstrate that the proffered position requires a course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the alleged requirement of a degree in any of several disparate fields does not establish the position as a specialty occupation. See § 214(i)(1) of the Act (requiring in pertinent part the "application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in *the* specific specialty" (emphasis added)); cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988).

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in graphic design; any of the fine arts; any branch of science, technology, or engineering; architecture; or any field related to that wide array of fields. As that array of fields of study does not delineate a specific specialty, this assertion does not suggest that the proffered position is in a specialty occupation. The Director's decision must therefore be affirmed and the petition denied on this basis.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will discuss the record of proceeding in relation to the four alternative 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 record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The petitioner claims that the proffered position corresponds to a graphic designer position. We recognize the U.S. Department of Labor'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>2</sup>

The *Handbook* states the following with regard to the duties of graphic designers:

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

## What Graphic Designers Do

Graphic designers create visual concepts, by hand or using computer software, to communicate ideas that inspire, inform, or captivate consumers. They develop the overall layout and production design for advertisements, brochures, magazines, and corporate reports.

## Duties

Graphic designers typically do the following:

- Meet with clients or the art director to determine the scope of a project
- Advise clients on strategies to reach a particular audience
- Determine the message the design should portray
- Create images that identify a product or convey a message
- Develop graphics for product illustrations, logos, and websites
- Select colors, images, text style, and layout
- Present the design to clients or the art director
- Incorporate changes recommended by the clients into the final design
- Review designs for errors before printing or publishing them

Graphic designers combine art and technology to communicate ideas through images and the layout of websites and printed pages. They may use a variety of design elements to achieve artistic or decorative effects.

Graphic designers work with both text and images. They often select the type, font, size, color, and line length of headlines, headings, and text. Graphic designers also decide how images and text will go together on a print or webpage, including how much space each will have. When using text in layouts, graphic designers collaborate closely with writers who choose the words and decide whether the words will be put into paragraphs, lists, or tables. Through the use of images, text, and color, graphic designers can transform statistical data into visual graphics and diagrams, which can make complex ideas more accessible.

Graphic design is important in the sales and marketing of products, and is a critical component of brochures and logos. Therefore, graphic designers, also referred to as graphic artists or communication designers, often work closely with people in advertising and promotions, public relations, and marketing.

Frequently, designers specialize in a particular category or type of client. For example, some create the graphics used in packaging for various types of retail products, while others may work on the visual design used on a book jacket.

Graphic designers also need to keep up to date with the latest software and computer technologies to remain competitive.

Some individuals with a background in graphic design teach in design schools, colleges, and universities. For more information, see the profile on postsecondary teachers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Graphic Designers, <http://www.bls.gov/ooh/arts-and-design/graphic-designers.htm#tab-2> (last visited Aug. 21, 2015).

Many of the duties of the proffered position do not appear to be the duties of a graphic designer. The record contains insufficient evidence demonstrating that the proffered position is a graphic designer position. Managing, developing, and updating a website is not a typical graphic designer duty. Managing data entry and web marketing, and planning and implementing sales promotion projects are, similarly, not duties associated with a graphic designer position. Designing and programming a virtual conference system are not duties typically performed by graphic designers. Search engine optimization, assuring that hyperlink texts are operational, and that different browsers can access a website are also not typical graphic designer duties.

On the other hand, the *Handbook* describes the duties of a web developer as follows:

### **What Web Developers Do**

Web developers design and create websites. They are responsible for the look of the site. They are also responsible for the site's technical aspects, such as performance and capacity, which are measures of a website's speed and how much traffic the site can handle. They also may create content for the site.

### **Duties**

Web developers typically do the following:

- Meet with their clients or management to discuss the needs of the website and the expected needs of the website's audience and plan how it should look
- Create and debug applications for a website
- Write code for the site, using programming languages such as HTML or XML
- Work with other team members to determine what information the site will contain
- Work with graphics and other designers to determine the website's layout

- Integrate graphics, audio, and video into the website
- Monitor website traffic

When creating a website, developers have to make their client's vision a reality. They work with clients to make sure it fits in with the type of site it is supposed to be, such as ecommerce, news, or gaming. Different types of websites may require different applications to work right. For example, a gaming site should be able to handle advanced graphics while an ecommerce site needs a payment processing application. The developer decides which applications and designs will best fit the site.

Some developers handle all aspects of a website's construction, while others specialize in a certain aspect of it. The following are some types of specialized web developers:

**Web architects or programmers** are responsible for the overall technical construction of the website. They create the basic framework of the site and ensure that it works as expected. Web architects also establish procedures for allowing others to add new pages to the website and meet with management to discuss major changes to the site.

**Web designers** are responsible for how a website looks. They create the site's layout and integrate graphics; applications, such as a retail checkout tool; and other content into the site. They also write web-design programs in a variety of computer languages, such as HTML or JavaScript.

**Webmasters** maintain websites and keep them updated. They ensure that websites operate correctly and test for errors such as broken links. Many webmasters respond to user comments as well.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Web Developers, <http://www.bls.gov/ooh/computer-and-information-technology/web-developers.htm#tab-2> (last visited Aug. 21, 2015).

The duties the petitioner attributed to the proffered position are generally consistent with the duties of web developers as described in the *Handbook*. On the balance, we find that the proffered position is a web developer position as described in the *Handbook*, with some ancillary duties related to programming and marketing.

The *Handbook* states the following about the educational requirements of web developer positions:

### **How to Become a Web Developer**

The typical education needed to become a web developer is an associate's degree in web design or related field. Web developers need knowledge of both programming and graphic design.

### **Education**

Educational requirements for web developers vary with the setting they work in and the type of work they do. Requirements range from a high school diploma to a bachelor's degree. An associate's degree in web design or related field is the most common requirement.

However, for web architect or other, more technical, developer positions, some employers prefer workers who have at least a bachelor's degree in computer science, programming, or a related field.

Web developers need to have a thorough understanding of HTML. Many employers also want developers to understand other programming languages, such as JavaScript or SQL, as well as have some knowledge of multimedia publishing tools, such as Flash. Throughout their career, web developers must keep up to date on new tools and computer languages.

Some employers prefer web developers who have both a computer degree and have taken classes in graphic design, especially when hiring developers who will be heavily involved in the website's visual appearance.

### **Advancement**

Web developers who have a bachelor's degree can advance to become project managers. For more information, see the profile on computer and information systems managers.

### **Important Qualities**

**Concentration.** Web developers must sit at a computer and write detailed code for long periods.

**Creativity.** Web developers are often involved in designing the appearance of a website and must make sure that it looks innovative and up to date.

**Customer-service skills.** Webmasters have to respond politely and correctly to user questions and requests.

*Id.* at <http://www.bls.gov/ooh/computer-and-information-technology/web-developers.htm#tab-4> (last visited Aug. 21, 2015).

The *Handbook* makes clear that web developer 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 is the typical education needed for entry, and that even a high school diploma may suffice.

When the *Handbook* does not support the 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 cases, 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. In the instant case, the petitioner has not provided sufficient evidence from any authoritative source to show that a minimum of a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

Further, we find 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 computers and web design, 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.

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: (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 petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The petitioner provided vacancy announcements posted by other companies. Those vacancy announcements are for positions entitled Graphic Designer, Senior Graphic Designer, and Mobile/Web Designer. We observe that, as we have found that the proffered position is not a graphic designer position, the announcements pertinent to graphic designer positions are of little apparent relevance to the educational requirements of the proffered position.

Further, the LCA states that the proffered position is a wage Level I, position, that 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The vacancy announcements provided, however, each state an experience requirement, and some require three or more years of experience. This suggests that they are not entry-level positions and not, therefore, positions parallel to the proffered position. That one of the positions is a "Senior" position further suggests that it is not an entry-level position, as the petitioner has designated the proffered position in this case.

Further, not all of the vacancy announcements provided require a minimum of a bachelor's degree *in a specific specialty* or its equivalent. One states that it requires a bachelor's degree in "relevant design, psychology, or technology field." It is not apparent from the announcement what the hiring authority would consider to be closely-related to the position offered, but the inclusion of those three dissimilar fields suggests that the position offered does not require a degree in a specific specialty.

Another vacancy announcement states a requirement of a bachelor's degree in "Graphics Design, Education, and/or Business or equivalent related experience." Again, graphics design and business are sufficiently diverse fields that they suggest that the position offered in that announcement does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, a degree with a generalized title, such as business, 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 is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, one of the vacancy announcements is for a "Mattress Firm." An online payments company placed one vacancy announcement. One vacancy announcement was placed by a recruiting company for a position with an unidentified client in an unidentified industry. The industry of the companies that placed the other vacancy announcements is also unclear. The petitioner has not demonstrated that any of the companies that placed those vacancy announcements are in the petitioner's industry, and some clearly are not. As such, for this additional reason, they are of no direct relevance to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from five announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>3</sup>

Thus, 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 to positions parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

*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." A review of the record indicates that the petitioner did not credibly demonstrate that the duties that comprise the proffered position 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 did not demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized

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<sup>3</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still would not have demonstrated what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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 not demonstrated 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 web developer positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of educational qualifications acceptable for such positions, including degrees less than a bachelor's degree. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner did not 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 employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

We 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.

In its March 26, 2013 letter, the petitioner stated: "It is an established practice in our company to hire employees with at least a Bachelor's degree for the position of a Graphic/Web Designer . . . ." However, the record does not identify the people who have held that position since the petitioner was established in [REDACTED]. As such, the petitioner has submitted insufficient evidence to corroborate that asserted policy.

Further, a requirement of an otherwise unspecified bachelor's degree is not, in itself, sufficient to establish a position as a specialty occupation position. Rather, as was explained in detail above, the position must require a minimum of a bachelor's degree *in a specific specialty* or its equivalent. The president stated, in its March 26, 2013 letter, that a degree in graphic design, fine arts, science, technology, engineering, architecture, or any field related to them would be a sufficient educational qualification for the proffered position. This does not indicate that the petitioner requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent for the proffered position.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

*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*

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that 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 designing, developing, managing, and updating a website; writing and editing website content; creating and sending e-mail magazines; managing data entry and web marketing; planning and implementing sales promotion projects; developing and programming a virtual conference system; etc., contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated with 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 web developer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the 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, and the evidence does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not 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.

#### IV. EARLY FILING OF PETITION

The remaining issue is whether the visa petition must be denied as having been filed impermissibly early.

##### A. Legal Framework

The regulation at 8 C.F.R. 214.2(h)(9)(i)(B) states, as to H-1B visa petitions, in pertinent part: "The petition may not be filed or approved earlier than 6 months before the date of actual need for the beneficiary's services or training . . . ."

## B. Analysis

The instant visa petition was filed on April 1, 2014 and states that the beneficiary was to begin work on October 31, 2014. The visa petition was, therefore, filed more than six months prior to the date when the petitioner stated that it sought to hire the beneficiary. On appeal, the petitioner asserted that the visa petition should have stated that the beneficiary would start work on October 1, 2014, and that the entry of the later date was the result of "a scrivners error."

However, 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). The visa petition was filed on April 1, 2014 for employment to start more than six months later. The appeal will be dismissed and the petition denied for this reason.

## V. CONCLUSION

An application or petition that does not comply with the technical requirements of the law may be denied by us 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 we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed 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.