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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 0 6 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Church" established in with one employee and ten volunteers. In order to employ the beneficiary in what it designates as a part-time "Instructional Coordinator" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. The petitioner now files this appeal, asserting that the director's decision was erroneous and failed to fully consider the submitted evidence.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition. Beyond the director's decision, we have identified an additional ground of ineligibility, i.e., that the submitted Labor Condition Application (LCA) does not correspond to the petition. For these reasons, the appeal will be dismissed, and the petition will be denied.

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 director'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.

I. FACTUAL AND PROCEDURAL HISTORY

As noted above, the petitioner describes itself as a "Church" established in In a letter dated September 27, 2013 submitted in support of the petition, the petitioner describes itself as a newly formed, "Christ-centered church" that offers "regular religious services" in addition to "various special meetings and religious activities" such as youth fellowship, couples-based fellowship, and age-specific worship. The petitioner states that it has "identified a need . . . to bring music to the lives of youth," and hence, it is "in need of an Instructional Coordinator who can, among other tasks, bring music and religious teaching to the youth members." Specifically, the petitioner describes the duties of the Instructional Coordinator as follows:

(1) Manage and coordinate production of religious, youth, and music programs materials in consultation with the pastor and program volunteers to meet designated teaching targets through the use of short and long-term religious retreats, religious seminars, Sunday worship services, and educational children's Sunday school;

(2) Coordinate, plan, and prepare religious teaching materials and educational programs designed to promote spirituality of participants and congregation;

(3) Research and review currently utilized teaching materials to ensure they remain up-to-date with current practices and succeed in creating bridges among the church, the materials, and the lives of people in the church;

(4) Regularly distribute materials for religious reflection, spiritual growth, and continued education to church members and those attending church outings;

(5) Conduct group rehearsals, meetings, counseling sessions, and outreach efforts within the church and larger community periodically and as necessary; and

(6) Lead youth group activities, including the creation, promotion, and rehearsal of children's music programs.

As to the educational requirements of the proffered position, the petitioner states that it requires a minimum of a "master's degree in education or ministry, related field, foreign equivalent, or its equivalent skills and knowledge gained from progressively advanced professional positions." The petitioner submitted evidence that the beneficiary received the equivalent of a Master of Science in Ministry and a Bachelor of Arts in Music Education from accredited colleges or universities in the United States.

The LCA submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title "25-9031, Instructional Coordinators" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

The petitioner also submitted, *inter alia,* job vacancy announcements for: an "Instructional Coordinator" position posted by a "District Arts Education Coordinator" position posted by the a "Coordinator, Academic Programs" position posted by an "ESL Program Instructional Coordinator" position posted by ; and an "Instructional Coordinator" position posted by

The director issued an RFE requesting, *inter alia*, evidence that the proffered position qualifies as a specialty occupation.

In response, the petitioner submitted, *inter alia,* a letter dated April 25, 2014 in which the petitioner concurrently asserts that the minimum educational requirement is a "bachelor's degree in education *or* ministry" as well as a "baccalaureate degree in education *and* worship" (emphasis added).

In the same letter, the petitioner explains the duties of the proffered position in more detail. Specifically, with respect to the first enumerated duty, the petitioner explains that "[i]n order to manage and coordination [*sic*] the production of religious teachings at our church, the Instructional Coordinator must have sound knowledge of God's word through academic study of the Bible." In addition, the petitioner asserts that the Instructional Coordinator must have "knowledge of the

fundamentals of religious music," "knowledge of vocal techniques and choral singer instruction," "working knowledge of organ," and "advanced knowledge of the fundamentals of Christian music."

With respect to the second enumerated duty, the petitioner asserts that the Instructional Coordinator must have "[f]amiliarity with the Bible, its teachings, and our church's doctrine." As for the "[l]evel of responsibility" of this particular job duty, the petitioner states that the Instructional Coordinator "will complete the tasks associated with this job responsibility fairly autonomously, but will heed to seek the suggestion of the church's pastor, who will provide the spiritual guidance and religious wisdom as a catalyst for Christ."

With respect to the third enumerated duty, the petitioner explains that the Instructional Coordinator "has primary responsibility for managing and completing the tasks associated with this job duty."

With respect to the fourth enumerated duty, the petitioner explains that the Instructional Coordinator "must be aptly skilled with the unification of word and action with biblical tenants, which can only be achieved through advanced education in ministry." As for the "[l]evel of responsibility" of this particular job duty, the petitioner states that the Instructional Coordinator "will undertake the tasks of distributing educational materials independently, with occasional consultation with the pastor."

With respect to the fourth and fifth enumerated duties, the petitioner explains that the Instructional Coordinator "has primary responsibility for managing and completing the tasks associated with [these] job [duties]."

Regarding its hiring history for the proffered position, the petitioner states: "[A]s a newly established church with only one paid employee, we do not have such a history from which to draw. Nonetheless, because of the highly skilled nature of the Instructional Coordinator's job responsibilities, the church elders collectively decided a bachelor's-level education was appropriate."

Regarding the complexity of the position, its constituent duties, and the knowledge required to perform them, the petitioner states the following:

> As noted above, the Instructional Coordinator at our church will be responsible for overseeing the entirety of our religious educational efforts outside of normally scheduled worship services, which also includes the education of our congregation's children. The Instructional Coordinator is further responsible for making critical resources decisions in conjunction with the counsel of our pastor as it relates to programming content and fellowship efforts. Because the position is so complex, only an individual with at least a baccalaureate degree in education and worship can perform the duties associated with the position at our church.
>
> In its letter dated February 3, 2014, the Service requested that we *"[p]rovide in layman's terms, a clear explanation of what differentiates the proffered position from other related [']non-specialty occupation[''] positions."* Simply, the offered specialty

> occupation of Instructional Coordinator is distinguished from related non-specialty positions, such as Sunday School Teacher, Youth Group Leader, or Worship Leader, in the level of authority and responsibility that the Instructional Coordinator possess with regard to the research, design, scheduling, recruitment, and, execution of contracts Christian educational programming for our church. The Instructional Coordinator is required to plan appropriate religious education, whereas leaders and teachers tend to deliver the message the Coordinator provides via specifically sourced material.

The petitioner submitted, *inter alia,* additional job vacancy announcements as follows: a "Coordinator of Youth Ministry" position posted by a "Family Ministry Coordinator" position posted by a "Coordinator of Youth Ministry" position posted by a "Christian Formation Coordinator" posted by and a "Coordinator of Religious Education" position posted by an unidentified Catholic Church in New Jersey.

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. The petitioner now files this appeal. On appeal, the petitioner asserts that the director failed to consider the totality of the evidence provided, and in particular, the entirety of the job duties. The petitioner emphasizes the nature of its organization as a religious organization, and states that the fact that it is a church makes it "unique and more complex than other organizations that may require the knowledge and skills of an Instructional Coordinator." In support of the appeal, the petitioner submits a brief and copies of previously submitted evidence.

II. SPECIALTY OCCUPATION

A. The Law

To meet its burden of proof in establishing the proffered position as a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which requires [(1)] 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 requires [(2)] 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, the position must also meet one of the following criteria:

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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 rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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. Preliminary Findings

As a preliminary matter, we find that the SOC code and title of "25-9031, Instructional Coordinators" is not appropriate for the proffered position. We make this finding based upon the nature of the petitioner as a religious organization, and not an educational institution.

We recognize the U.S. Bureau of Labor Statistic's *Occupational Outlook Handbook* (*Handbook*)[1] as an authoritative source regarding the wide variety of occupations that it addresses. According to the *Handbook*, the work environment for Instructional Coordinators is within schools and other educational institutions. Specifically, the *Handbook* states: "Work Environment: Instructional coordinators work in elementary and secondary schools, and various education institutions, such as colleges, professional schools, and education support services." *Id.* at http://www.bls.gov/ooh/education-training-and-library/instructional-coordinators.htm#tab-1 (last visited Feb. 4, 2015). Here, the record of proceeding lacks evidence that the petitioner could reasonably be considered a "school" or "educational institution" within the ordinary meaning of those terms.[2]

[1] 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.

[2] While we acknowledge that the petitioner offers religious educational programs, this still does not overcome the fact that the petitioner is primarily a religious organization, and not primarily an educational institution.

Rather, considering that the petitioner is a religious organization, we find that the proffered position is best categorized under the SOC code and title of "21-2021, Directors, Religious Activities and Education." In particular, O*NET describes the primary duties of positions falling under the "21-2021, Directors, Religious Activities and Education" occupational classification as follows: "Plan, direct, or coordinate programs designed to promote the religious education or activities of a denominational group. May provide counseling and guidance relative to marital, health, financial, and religious problems." *See:* http://www.onetonline.org/link/summary/21-2021.00 (last visited Feb. 4, 2015). We find that this description accurately summarizes the duties of the proffered position within the context of the petitioner's overall operations as a religious organization.

Furthermore, O*NET lists the following tasks for positions falling within the "Directors, Religious Activities and Education" occupational classification:

1. Identify and recruit potential volunteer workers.
2. Train and supervise religious education instructional staff.
3. Develop or direct study courses or religious education programs within congregations.
4. Select appropriate curricula or class structures for educational programs.
5. Implement program plans by ordering needed materials, scheduling speakers, reserving space, or handling other administrative details.
6. Counsel individuals regarding interpersonal, health, financial, or religious problems.
7. Analyze member participation or changes in congregational emphasis to determine needs for religious education.
8. Collaborate with other ministry members to establish goals and objectives for religious education programs or to develop ways to encourage program participation.
9. Schedule special events such as camps, conferences, meetings, seminars, or retreats.
10. Confer with clergy members, congregational officials, or congregational organizations to encourage support of or participation in religious education activities.

Id.

The majority of the tasks listed in O*NET for "Directors, Religious Activities and Education" directly correlate to the duties of the proffered position. For instance, the proffered duties include managing, planning, coordinating, and preparing the production of religious teaching materials and educational programs, in consultation with the pastor and other volunteers, which overlap with at least the third, fourth, fifth, and eighth duties listed in O*NET for "Directors, Religious Activities

and Education." Also, the petitioner elaborated in response to the RFE that the beneficiary will "source, purchase, and distribute Christian teaching resources," which corresponds to the O*NET duty of selecting appropriate curricula for educational programs.

Accordingly, we find that the proffered position is best classified as a position falling under the SOC code and title of "21-2021, Directors, Religious Activities and Education." As such, our analysis of whether the proffered position qualifies as a specialty occupation will be based upon the SOC code and title of "21-2021, Directors, Religious Activities and Education," and not "25-9031, Instructional Coordinators" as chosen by the petitioner.

As a second preliminary matter, we find that the petitioner has provided inconsistent statements regarding the minimum educational requirement for the proffered position. More specifically, in the petitioner's letter dated September 27, 2013, the petitioner asserted that it requires a minimum of a "master's degree in education or ministry, related field, foreign equivalent, or its equivalent skills and knowledge gained from progressively advanced professional positions." In response to the RFE, however, the petitioner concurrently asserts that the proffered position requires a minimum of a "bachelor's degree in education *or* ministry" as well as a "baccalaureate degree in education *and* worship" (emphasis added). Not only do these inconsistencies undermine the legitimacy of the petitioner's assertions regarding the minimum educational requirements for the proffered position - and hence the position's qualification as a specialty occupation - but they also undermine the petitioner's overall credibility as well.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

C. Discussion of Criteria

To make our determination whether the proffered position qualifies as a specialty occupation, we turn to the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As indicated above, our analysis of the proffered position will be based upon the SOC code and title of "21-2021, Directors, Religious Activities and Education."

The criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) and (*2*) requires the petitioner to demonstrate that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; or a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook* on which we routinely rely for the educational requirements of particular occupations, reports the

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

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

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. We have reviewed the information in the *Handbook* regarding the occupational category "Directors, Religious Activities and Education" 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 Feb. 4, 2015).

Thus, the narrative of the *Handbook* indicates that there are many occupations for which only brief summaries are presented. That is, detailed occupational profiles for these occupations are not developed.[3] The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

[3] We note that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

Accordingly, in certain instances, the *Handbook* is not determinative. There is no documentation from any other authoritative sources with regard to this criterion. As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

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

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

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook,* or other reliable and authoritative sources, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no reliable submissions from professional associations, individuals, 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.

The petitioner has submitted several vacancy announcements. However, the petitioner's reliance on these announcements is misplaced. The first set of vacancy announcements submitted by the petitioner (i.e., the announcements for an "Instructional Coordinator" position at a "District Arts Education Coordinator" position at the a "Coordinator, Academic Programs" position at an "ESL Program Instructional Coordinator" position at and an "Instructional Coordinator" position at are not for similar organizations in the petitioner's industry nor for parallel positions. As we discussed earlier, the petitioner is not a school or educational institution, and the proffered position is not appropriately classified as an Instructional Coordinator position.

With respect to the second set of vacancy announcements (i.e., for a "Coordinator of Youth Ministry" position at a "Family Ministry Coordinator" position at a "Coordinator of Youth Ministry" position at a "Christian Formation Coordinator" at and a "Coordinator of Religious Education" position at an unidentified Catholic Church in New Jersey), the petitioner has failed to establish that the posting organizations are similar to the petitioner.

For the petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. The petitioner has not supplemented the record with sufficient information to establish that the advertising organizations are similar to the petitioner.

Specifically, the vacancy announcement for states that this organization "has over 2300 families registered in our parish," and is served by three Catholic priests and five active deacons. Similarly, the vacancy announcement for the states that this organization "is a young parish consisting of approximately 2,000 families." The petitioner has not provided sufficient information about its general characteristics, such as the size of its congregation and staffing,[4] in order to establish that it is similar to Furthermore, the petitioner provided no information about the general characteristics of and the unidentified Catholic Church in , New Jersey.

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 the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

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 has failed to 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.

Here, the petitioner asserts that the proffered position is "complex" because the Instructional Coordinator will be "responsible for overseeing the entirety of our religious educational efforts outside of normally scheduled worship services, which also includes the education of our congregation's children." The petitioner emphasizes the "level of authority and responsibility that the Instructional Coordinator possesses with regard to the research, design, scheduling, recruitment,

[4] On the Form I-129, the petitioner indicated that it has one paid employee and ten "volunteers to be converted to paying positions in the future." However, the petitioner did not provide any other explanation regarding its paid employee and volunteers, such as their positions within the church. In its September 27, 2013 letter, the petitioner stated that it is a "new church with a budding congregation . . . ." The petitioner did not provide any evidence of the size of its congregation.

and, execution of contracts Christian educational programming for our church." In addition, the petitioner asserts that the Instructional Coordinator is "responsible for making critical resources decisions in conjunction with the counsel of our pastor as it relates to programming content and fellowship efforts." On appeal, the petitioner asserts that the fact that it is a church makes the position "unique and more complex than other organizations."

However, the record does not establish that this position is significantly different from other "Directors, Religious Activities and Education" positions, for which O*NET summarizes the primary job duties as to "[p]lan, direct, or coordinate programs designed to promote the religious education or activities of a denominational group." *Id.* at http://www.onetonline.org/link/summary/21-2021.00 (last visited Feb. 4, 2015). As discussed previously, the record does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into positions within this occupational classification.

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

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.[5]

With respect to this criterion, the petitioner indicates that it has never previously hired for the proffered position. Specifically, the petitioner states: "[A]s a newly established church with only one paid employee, we do not have such a [hiring] history from which to draw." 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

[5] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

The petitioner did not submit any evidence pertinent to this criterion, and as such, has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. A review of the record indicates that 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 have not been shown to be 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.

The petitioner asserts that the proffered position requires "sound knowledge of God's word through academic study of the Bible" as well as "knowledge of the fundamentals of religious music," "knowledge of vocal techniques and choral singer instruction," "working knowledge of organ," "advanced knowledge of the fundamentals of Christian music," and "[f]amiliarity with the Bible, its teachings, and our church's doctrine." However, the petitioner has not explained with any specificity how such knowledge could only be attained through a minimum of a bachelor's or master's degree in education and/or ministry. The petitioner has not specifically identified what particular courses of study provide each body of knowledge identified above, and how these courses represent an established curriculum leading to a bachelor's or master's degree in education and/or ministry.[6]

Moreover, if the minimum educational requirement is a degree in education, then we must question how such a degree would provide the required religious and musical knowledge the petitioner asserts is necessary for the position.

For the reasons above, the evidence of record fails to satisfy 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 for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. THE LCA

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, the job title on the LCA

[6] We incorporate here our earlier discussion regarding the discrepancies in the petitioner's claims about the minimum educational requirement for the proffered position, i.e., whether it is a "master's degree in education or ministry," a "bachelor's degree in education or ministry" or a "baccalaureate degree in education and worship."

submitted with the petition reads "Instructional Coordinator," and it was certified for SOC (O*NET/OES) Code 25-9031 or "Instructional Coordinators." As determined *supra*, however, the job as titled and as described by the petitioner is best classified under SOC (O*NET/OES) Code 21-2021 or "Directors, Religious Activities and Education." As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 21-2021, not SOC (O*NET/OES) Code 25-9031, in order for it to be found to correspond to the petition.

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

IV. CONCLUSION

The evidence of record fails to establish that the proffered position qualifies as a specialty occupation. Beyond the director's decision, the evidence of record fails to establish that the LCA corresponds to the petition. Accordingly, 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.

An application or petition that fails to 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 at 145 (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 1043, *aff'd*. 345 F.3d 683.

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

ORDER: The appeal is dismissed. The petition is denied.