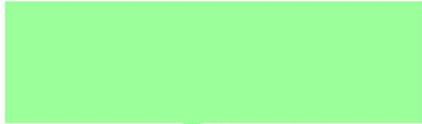
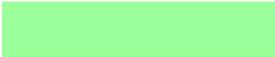


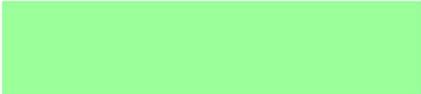
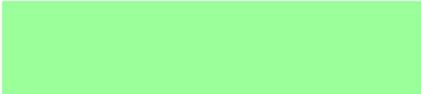


U.S. Citizenship  
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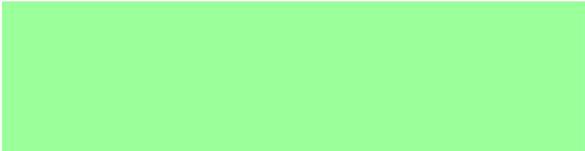
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DATE: FEB 06 2015 OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

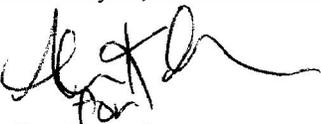
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:  


INSTRUCTIONS:

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

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

Thank you,  


Ron Rosenberg  
Chief, Administrative Appeals Office

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

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a 50-employee "Day Care Center" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Pre-School Teacher" 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position, and finding that the petitioner had not established that the beneficiary maintained legal status in the United States.

On appeal, counsel asserted that the director's finding pertinent to the specialty occupation issue was incorrect, and contended that the petitioner satisfied all evidentiary requirements in that regard. As to the maintenance of status issue, counsel stated:

**The Service erred in not finding that the beneficiary had been gainfully employed by the petitioner from which he last obtained H-1B non immigrant status.**

We submit that the Letter confirmation from the previous employer is sufficient to prove the last employment of the beneficiary with the petitioner from which he last obtained the H-1B non immigrant status.

In any event, we respectfully submit that the beneficiary's alleged failure to maintain a valid H-1B status, even if true, is not a ground for the denial of the petition. Such failure to maintain valid status could admittedly be a ground for denial of the application for the extension of stay of the beneficiary, but not of the petition. Considering that the petitioner has sufficiently established that the proffered position is a specialty occupation, the Service should have approved the petition and simply directed the beneficiary to pick-up the H-1B visa abroad.

## II. WITHDRAWAL OF THE MAINTENANCE OF STATUS ISSUE

We find that counsel is correct that the issue of the beneficiary's maintenance of status is not a basis for denying the visa petition and we withdraw that basis of denial. As the beneficiary's maintenance of legal status in the United States is not relevant to the approvability of the instant visa petition, we need not reach the factual issue of whether the petitioner demonstrated that the beneficiary maintained legal status in the United States.

### III. SPECIALTY OCCUPATION ISSUE

The remaining issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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

#### 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:

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

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

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its

particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty

occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

#### IV. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Group Teacher" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 25-2011, Preschool Teachers, Except Special Education from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary studied at [REDACTED] in the Philippines. Counsel also submitted a public school teacher certificate issued to the beneficiary by the [REDACTED] Education Department. The Certification Area designated on the certificate is "Early Childhood Education (Birth-Grade 2).

On January 27, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted: (1) evidence pertinent to the educational credentials of three people other than the beneficiary; and (2) a letter, dated April 15, 2014, from [REDACTED] the petitioner's executive director.

The evidence submitted pertinent to the educational credentials of people other than the beneficiary shows that [REDACTED] received a bachelor's degree in elementary education from the [REDACTED] in the Philippines; [REDACTED] received a bachelor's degree from the [REDACTED] [REDACTED] received a bachelor's degree from [REDACTED] in the Philippines;

[REDACTED] April 15, 2014 letter contains the following duty description:

1. Teach pre-school pupils academic, social and manipulative skills in private education system- 30%.
2. Prepare lesson plan and teaching outline for course of study, lecture, demonstrate and use audiovisual teaching aids to present subject matters to class-30%.
3. Instructs children in activities designed to promote social, physical and intellectual growth needed for primary school- 5%.
4. Prepare, administer and correct assessments and record result- 10%.

5. Assign lessons, correct papers and hear oral presentations-5%.
6. Discuss pupil's academic and behavior problems with parents and suggest remedial action-5%.
7. Keep attendance and grade records-5%.
8. Plans individual and group activities to stimulate growth in language & literacy, social and emotional, cognitive & approaches to learning-10%

That letter further states:

In our School all of our Group Teachers have a minimum of a Bachelor's degree e.g., [REDACTED] to name a few. The complexity of the job offered requires the services of a person who is a holder of baccalaureate degree in Education to perform in this specialty occupation of Group Teacher. The requirement of a Bachelor's degree is a minimum requirement in our School and certainly it is also the standard minimum requirement in New York State.

The director denied the petition on June 2, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted three vacancy announcements posted by other schools and a brief. In the brief, counsel asserted that the proffered position had been shown to be so complex that it can be performed only by an individual with a degree in a specific specialty and that the petitioner had demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Counsel also cited a non-precedent AAO decision for the proposition that "teachers are considered professionals if 'required to have a probationary certification and a degree in any academic major with the completion of specialized courses and teacher training.'"

## V. ANALYSIS

Initially, we observe that counsel's reference to AAO non-precedent decisions has no persuasive impact. While 8 C.F.R. § 103.3(c) provides that USCIS precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel

positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (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)(I): 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.<sup>1</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 25-2011, Preschool Teachers, Except Special Education from O\*NET. The *Handbook* describes the occupation of "Preschool Teachers" as follows:

### **What Preschool Teachers Do**

Preschool teachers educate and care for children, usually ages 3 to 5, who have not yet entered kindergarten. They teach reading, writing, science, and other subjects in a way that young children can understand.

### **Duties**

Preschool teachers typically do the following:

- Prepare children for kindergarten by introducing concepts they will explore further in kindergarten and elementary school
- Work with children in groups or one on one, depending on the needs of children and the subject matter
- Plan and carry out a curriculum that targets different areas of child development, such as language, motor, and social skills
- Organize activities so children can learn about the world, explore interests, and develop talents
- Develop schedules and routines to ensure children have enough physical activity, rest, and playtime
- Watch for signs of emotional or developmental problems in children and bring problems to the attention of parents

<sup>1</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.

- Keep records of the students' progress, routines, and interests, and keep parents informed about their child's development

Young children learn from playing, problem solving, questioning, and experimenting. Preschool teachers use play and other instructional techniques to teach children about the world. For example, they use storytelling and rhyming games to teach language and vocabulary. They may help improve children's social skills by having them work together to build a neighborhood in a sandbox or teach math by having children count when building with blocks.

Preschool teachers work with children from different ethnic, racial, and religious backgrounds. Teachers include topics in their lessons to teach children to respect people of different backgrounds and cultures.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Preschool Teachers," <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-2> (last visited Feb. 4, 2015).

The duties attributed to the proffered position in [REDACTED] April 15, 2014 letter are consistent with the duties of preschool teachers as described in the *Handbook*. On the balance, we find that the proffered position is a preschool teacher position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of preschool teacher positions:

### **How to Become a Preschool Teacher**

Education and training requirements vary based on settings and state regulations. They range from a high school diploma and certification to a college degree.

### **Education**

In childcare centers, preschool teachers generally are required to have a least a high school diploma and a certification in early childhood education. However, employers may prefer to hire workers with at least some postsecondary education in early childhood education.

Preschool teachers in Head Start programs are required to have at least an associate's degree. However, at least 50 percent of all preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field. Those with a degree in a related field must have experience teaching preschool-age children.

In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

### **Licenses, Certifications, and Registrations**

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

Some states and employers require childcare workers to have a nationally recognized certification. Most often, states require the Child Development Associate (CDA) certification offered by the Council for Professional Recognition. Obtaining the CDA certification requires coursework, experience in the field, a written exam, and observation of the candidate working with children.

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

In public schools, preschool teachers must be licensed to teach early childhood education, which covers preschool through third grade. Requirements vary by state, but they generally require a bachelor's degree and passing an exam to demonstrate competency. Most states require teachers to complete continuing education credits to maintain their license.

### **Other Experience**

A few states require preschool teachers to have some work experience in a childcare setting. The amount of experience necessary varies by state. In these cases, preschool teachers often start out as childcare workers or teacher assistants.

### **Important Qualities**

**Communication skills.** Preschool teachers need good communication skills to tell parents and colleagues about students' progress. They need good writing and speaking skills to convey this information effectively. They must also be able to communicate well with small children.

***Creativity.*** Preschool teachers must plan lessons that engage young students. In addition, they need to adapt their lessons to suit different learning styles.

***Interpersonal skills.*** Preschool teachers must understand children's emotional needs and be able to develop good relationships with parents, children, and colleagues.

***Organizational skills.*** Teachers need to be organized to plan lessons and keep records of their students.

***Patience.*** Working with children can be frustrating, and preschool teachers should be able to respond calmly to overwhelming and difficult situations.

***Physical stamina.*** Working with children can be physically taxing, so preschool teachers should have a lot of energy.

### **Advancement**

Experienced preschool teachers can advance to become the director of a preschool or childcare center or a lead teacher, who may be responsible for the instruction of several classes. Those with a bachelor's degree in early childhood education frequently are qualified to teach kindergarten through grade 3, in addition to preschool. Teaching positions at these higher grades typically pay more. For more information, see the profiles on preschool and childcare center directors and kindergarten and elementary school teachers.

*Id.* at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4> (last visited Feb. 4, 2015).

The *Handbook* contains no indication that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position offered in this case. Although it states that some preschool teacher positions require a bachelor's degree, or even a bachelor's degree in early childhood education, it makes equally clear that other preschool positions do not require a specialized bachelor's degree, or even a minimum of any bachelor's degree at all. It states, "In childcare centers, preschool teachers generally are required to have a least a high school diploma and a certification in early childhood education." It further states that requirements for certification include a high school diploma, experience in the field, and coursework, but does not suggest that certification is the equivalent of a bachelor's degree in a specific specialty.

Where, 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 this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a 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."

On this point, Sheila Willard asserted, in her April 15, 2014 letter, that the "requirement of a Bachelor's degree is a minimum requirement in our School and certainly it is also the standard minimum requirement in New York State." However, there is insufficient evidence in the record to demonstrate that the state of New York requires a bachelor's degree in a specific specialty for the proffered position. We note that the New York regulations on "Child Day Care Services" do not state a requirement of a bachelor's degree for "Head of Group for Preschoolers" positions. *See* N.Y. Comp. Codes R. & Regs. tit. 18 § 418-1.13 (2014). Further, while the petitioner asserts that it requires a "baccalaureate degree in Education," it has failed to sufficiently demonstrate why it needs a group teacher with a bachelor's degree in education when the state does not require such qualifications.

The record of proceeding does not contain any persuasive documentary evidence from any relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] 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, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

Next, 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and

recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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

Also, there are no submissions from professional associations, 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.

As was noted above, counsel did provide three vacancy announcements. They are for positions entitled Preschool Teacher and Pre-K Lead Teacher. Initially, we observe that the proffered position is designated a Level I Preschool Teacher position, which indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I preschool teacher positions, entry-level positions requiring only a basic understanding of the job of preschool teacher, require a minimum of a bachelor's degree in a specific specialty or its equivalent. The job title "Lead Teacher," however, suggests that position may be a higher level position. As such, the Pre-K Lead Teacher position has not been shown to be a position parallel to the proffered position.

Further, even if all three 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 failed to demonstrate what statistically valid inferences, if any, can be drawn from three announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>2</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 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.

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

<sup>2</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). In this case, the petitioner failed to demonstrate 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).

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.

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

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I preschool teacher, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of teaching preschool children. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some preschool teacher positions do not require such a degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty, and that some such positions require no college degree at all. 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 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.<sup>3</sup>

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<sup>3</sup> 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

April 15, 2014 letter states; that all of the petitioner's group teachers have bachelor's degrees. It provides some examples of those degrees. We observe that the petitioner is a day care center with 50 employees, and has been in business since [REDACTED]. The record does not contain sufficient evidence of the number of group teachers the petitioner presently employs or the number it has employed in the past and its hiring practices and qualifications of those employees. Without such evidence we cannot determine that the petitioner normally requires a bachelor's degree for the proffered position. Further, merely demonstrating that it normally requires a bachelor's degree for the position would be insufficient. The petitioner is obliged to show that it normally requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent for the proffered position.

In this regard, we observe that although the diploma provided for [REDACTED] indicates that she has a bachelor's degree in elementary education awarded by a school in the Philippines, no evaluation of the equivalency of that foreign degree was submitted. The diplomas of [REDACTED] and [REDACTED] do not indicate the subjects in which they received their degrees. Also, although the petitioner stated that [REDACTED] has a bachelor's degree, no evidence was provided to corroborate that assertion, nor has the subject in which he or she received a degree even been alleged. Even further, the record contains insufficient evidence that [REDACTED] and [REDACTED] work for the petitioner, let alone that they work for the petitioner as group teachers.

For all of those reasons, we find that the petitioner has not provided sufficient evidence that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and has not, therefore, satisfied 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.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as planning and

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").

<sup>4</sup> It is not clear whether [REDACTED] are the same person, but we observe that the record does not contain evidence to support that proposition, nor even an assertion that it is so.

executing a curriculum; organizing children's activities; developing schedules of various school activities; watching for signs of emotional or developmental problems in children and bringing such problems to the attention of parents; keeping records of students' progress, routines, and interests; and keeping parents informed of children's development contain no indication of a nature so specialized and complex they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

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

For the reasons discussed above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

## VI. ADDITIONAL BASIS

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

The evidence submitted pertinent to the beneficiary's education includes a transcript showing that he graduated with a bachelor's degree in child development and education from [REDACTED] in the Philippines. However, the record contains no evaluation to show the equivalency of the beneficiary's foreign education to a U.S. education and degree. As such, the evidence is insufficient, pursuant to the salient regulations,<sup>5</sup> to show that the beneficiary is qualified to work in any specialty occupation position. Therefore, beyond the decision of the director, the visa petition must be denied for this additional reason.<sup>6</sup>

<sup>5</sup> See 8 C.F.R. § 214.2(h)(4)(iii)(C).

<sup>6</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

## VII. CONCLUSION

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 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 1043, *aff'd*. 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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