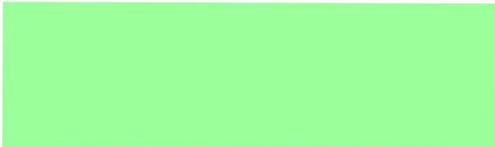
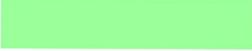


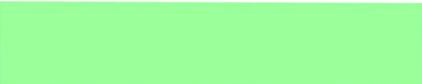
(b)(6)



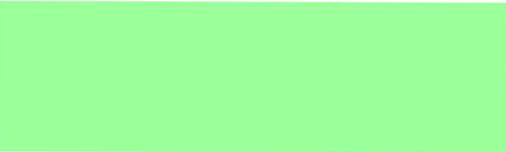
U.S. Citizenship
and Immigration
Services



DATE: **JAN 30 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)

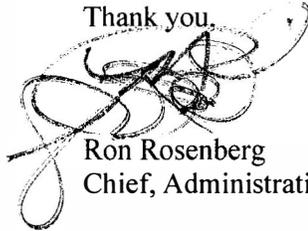
ON BEHALF OF PETITIONER:


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 denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL BACKGROUND

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on April 1, 2013. In the Form I-129 visa petition, the petitioner describes itself as a cable television network that was established in [REDACTED]. In order to employ the beneficiary in what it designates as a reporter 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 found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). The petitioner and counsel responded to the RFE by submitting additional evidence in support of the H-1B petition. The director reviewed the information and determined that the petitioner had not established eligibility for the benefit sought. The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

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

For the reasons that will be discussed, we agree with the director's decision that the record of proceeding does not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

II. SPECIALTY OCCUPATION

A. Law

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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.

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

B. Proffered Position

In this matter, the petitioner states in the Form I-129 that it seeks the beneficiary's services as a reporter at an hourly wage of \$14.44 per hour (35 hours per week). In a letter dated March 29, 2013, the petitioner provided the following duties and requirements for the proffered position:

- Research news story ideas from various sources including the internet and news services and networks such as [REDACTED]
- Collect and analyze information about newsworthy events and write news for network website and network daily cable TV news shows.
- Report on stories on the broad financial area of interest to the local Chinese community. The news beat includes economics, finance and business.
- Interview influential individuals in the stock market, futures and business.

The holder of this position must have a Bachelor's or preferably a Master's degree in a Business-related field or in Journalism, Communication, Television or other related field with experience in business reporting.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The petitioner indicated on the LCA that the proffered position corresponds to the occupational category "Reporters and Correspondents" – SOC (ONET/OES Code) 27-3022, at a Level I (entry level) wage.

C. Discussion

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, and for the specific reasons described below, we agree with the director and find that the evidence fails to establish that the position as described constitutes a specialty occupation.

To begin with, we observe that the duties of the proffered position, as described by the petitioner, have been stated in generic terms that do not convey the actual work the beneficiary will perform on a day-to-day basis. There is no information as to the order of importance and/or frequency (e.g., regularly, periodically or at irregular intervals) of occurrence with which the beneficiary will perform the functions and tasks. The petitioner did not establish the primary and essential functions of the proffered position. Moreover, we note that the wording of the some of the duties is recited virtually verbatim from various Internet sources, including the U.S. Department of Labor's (DOL) Dictionary of Occupational Titles (DOT).² In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of its business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

² DOT, for instance, states that a reporter "[c]ollects and analyzes information about newsworthy events to write news stories for publication or broadcast." For additional information on DOT, see [http://www.\[REDACTED\]](http://www.[REDACTED])

The petitioner states that a bachelor's degree in a business-related field, journalism, communication, television, or other related field with experience in business reporting is sufficient for the proffered position. To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 147.³

We further note that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. See *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). We do not find, however, that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner. Instead, USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. Furthermore, we do not find (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Associates*,

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

Second, in promulgating the H-1B regulations, the former Immigration and Naturalization Service (INS) made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.* In any event, the petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis Int'l v. INS*.⁴

We will now review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (hereinafter the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Reporters and Correspondents."

We reviewed the chapter of the *Handbook* entitled "Reporters, Correspondents, and Broadcast News Analysts," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Reporters, Correspondents, and Broadcast News Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Reporter, Correspondent, or Broadcast Analyst" states the following about this occupational category:

Education

Most employers prefer workers who have a bachelor's degree in journalism or communications. However, some employers may hire applicants who have a degree

⁴ In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

⁵ All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Reporters, Correspondents, and Broadcast News Analysts."

in a related subject, such as English or political science, and relevant work experience.

Bachelor's degree programs in journalism and communications include classes in journalistic ethics and techniques for researching stories and conducting interviews.

Many programs require students to take liberal arts classes, such as English, history, economics, and political science, so that students are prepared to cover stories on a wide range of subjects.

Some journalism students may benefit from classes in multimedia design, coding, and programming. Because content is increasingly delivered on television, websites, and mobile devices, reporters need to know how to develop stories with video, audio, data, and graphics.

Some schools offer graduate programs in journalism and communications. These programs prepare students who have a bachelor's degree in another field to become journalists.

Other Experience

Employers generally require workers to have experience gained through internships or by working on school newspapers. While attending college, many students seek multiple internships with different news organizations.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Reporters, Correspondents, and Broadcast News Analysts, on the Internet at <http://www.bls.gov/ooh/media-and-communication/reporters-correspondents-and-broadcast-news-analysts.htm#tab-4> (last visited January 29, 2015).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position under this occupational category at a Level I on the LCA.⁶ This designation is indicative of a

⁶ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric.

comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship.

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupational category. Rather, the *Handbook* states that most employers prefer workers who have a bachelor's degree in journalism or communications. However, a *preference* for such a degree does not establish that it is normally the minimum requirement for entry into the particular position.

Further, the *Handbook* states that some employers may hire applicants who have a degree in a related subject and relevant work experience. The *Handbook* does not specify the level of such a degree, and it appears that an associate's degree may be acceptable. Moreover, the *Handbook* states that a degree in such disciplines as journalism, communications, English, or political science may be acceptable to employers.⁷ The narrative of the *Handbook* continues by emphasizing the importance of work experience. According to the *Handbook*, employers generally require workers to have experience gained through internships or by working on school newspapers. However, the *Handbook* does not support the petitioner's assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

In response to the RFE and in the appeal, counsel refers to the Occupational Information Network

Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁷ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

(O*NET) Summary Report on "Reporters and Correspondents." Counsel states that the summary report provides statistics compiled by the U.S. Bureau of Labor Statistics with regard to the educational credentials of reporters. From this counsel claims that the summary report shows "that a bachelor's degree is 'normally' the minimum standard." We reviewed the summary report; however, contrary to counsel's assertion, it does not support the statement that the proffered position qualifies as a specialty occupation.

First, we disagree with counsel's suggestion that the percentages scored by the survey of respondents are a statistically accurate measure of the percentages of educational attainment among the entire population of reporters and correspondents. We are aware of no such claim by the producers of the O*NET, and we note that the O*NET depicts the percentages as generated only by an unspecified number of voluntary respondents to questionnaires. In any event, a critical feature of the criterion here is it is satisfied only if the petitioner establishes that the "particular position" - not a percentage of positions within the position's occupational group - normally requires the criterion's educational level.

Moreover, this O*NET "Percentage of Respondents" upon which counsel relies does not indicate that any particular "education level" must be in a *specific specialty* (or its equivalent). Further, the O*NET summary report does not distinguish the respondents' positions within the occupation, such as by career level (e.g., entry-level, midlevel, senior-level). The O*NET "Percentage of Respondents" is not probative evidence that the particular position here proffered is one for which a bachelor's or higher degree in a specific specialty (or its equivalent) is normally the minimum requirement for entry.

Counsel also references the subsection of the summary report entitled "Education," in which O*NET states that "[m]ost of these occupations require a four-year bachelor's degree, but some do not." We note that the term "most" is not indicative that a particular position within the wide spectrum of reporter and correspondent positions normally requires at least a bachelor's degree.⁸ Moreover, O*NET does not state that such a degree must be in a *specific specialty*. Again, the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) is one that requires a degree in a specific specialty, or its equivalent, that is directly related to the proposed position. As such, the information provided in the summary report is not sufficient to support counsel's conclusion.

⁸ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which as noted above is designated as a Level I entry position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

For a position to be a specialty occupation, there must be a close correlation between the required specialized studies and the position, thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. at 560 ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Thus, the *Handbook* and O*NET Summary Report do not support the claim that the occupational category here is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level reporter position (as indicated by the petitioner on the LCA), would normally have such a minimum, specialty degree requirement or its equivalent.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of 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. The record does not contain letters or affidavits in support of this criterion. Further, the petitioner does not claim that it has satisfied this criterion of the regulations. Based upon a complete review of the record, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of the petition, the petitioner provided information regarding the proffered position and evidence regarding its business operations (including a brochure and one quarterly wage report). However, upon review of the record, we find that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of reporter.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Reporters and Correspondents" at a Level I (entry level) wage.⁹ Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁰ The petitioner has not demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position relative to other positions in the occupation, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or its equivalent.

Further, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. In addition, the petitioner and counsel 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 position. While a few related courses may be beneficial, or even required, in performing certain duties of the 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 proffered position.

In the support letter, the petitioner claimed that the beneficiary "is highly qualified for this position based on his education and experience." However, as discussed earlier, the test to establish a position as a specialty occupation is not the education or relevant experience of a proposed

⁹ The wage-level of the proffered position indicates that, relative to others within the occupation, the beneficiary is only required to have a basic understanding of the occupation; that he will perform routine tasks that require limited, if any, exercise of independent judgment; his work will be closely supervised and monitored; he will receive specific instructions on required tasks and expected results; and his work will be reviewed for accuracy.

¹⁰ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). The petitioner and counsel do not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, the petitioner has failed to establish the proffered position as satisfying this prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. In addition, the petitioner may submit any other documentation it considers relevant to this criterion of the regulations.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as

the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner stated in the Form I-129 petition that it has 120 employees and that it was established in [REDACTED] (approximately [REDACTED] years prior to the filing of the H-1B petition). In response to the RFE, the petitioner submitted a list of individuals. On appeal, counsel claimed that "proving actual documentation of each employee's degree poses an enormous and unreasonable burden in a firm of 125 employees with over 40 employees holding this position title." Although we reviewed counsel's assertion, we note that the list of individuals was not endorsed by the petitioner and no information was provided as to the source of the information and the methods used to accumulate the data (e.g., self-reporting by individuals, checking personnel records, reviewing resumes/job applications, examining diplomas or transcripts). Moreover, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, although counsel provided a general statement that the petitioner employs 44 individuals who serve as reporters, the petitioner did not provide the job duties and day-to-day responsibilities of the positions that it claims are the same as the proffered position. The petitioner did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, aside from the claimed job title, it is unclear whether the duties and responsibilities of these individuals are the same or related to the proffered position.

In addition, the record lacks evidence establishing that these individuals are employed by the petitioner (e.g., pay statements, Form W-2 Wage and Tax Statements).¹¹ Some of the entries state that the individuals are not on the payroll. No explanation was provided for these statements.

Moreover, we note that the degrees listed on the list include labor relations, public administration, business administration, education – intercultural comm., advertising, politics, educational psychology, business enterprise, as well as others. Furthermore, some of the entries do not include any specific field of study or discipline. We reiterate that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. Based upon the list, it appears that a range of disparate fields are acceptable.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is

¹¹ The petitioner submitted a 2013 quarterly tax return indicating the total number of people that it employs.

usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

While the evidence in the record regarding the proffered position and the petitioner's business operations (including the company brochure and quarterly tax return) provide some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. We reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, the petitioner has not demonstrated that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. As previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established 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. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

III. BEYOND THE DECISION OF THE DIRECTOR

A. Wage Level on the Labor Condition Application

Based upon the information provided by the petitioner, it appears that the beneficiary's duties may require knowledge of Chinese. In accordance with the guidance provided by DOL, a language requirement other than English in a petitioner's job offer generally is considered a special skill for all occupations, with the exception of "Foreign Language Teachers and Instructors," "Interpreters," and "Caption Writers." Here, the petitioner designated the proffered position at a Level I (the lowest of four assignable wage levels), and it has not been established that any foreign language

requirement was reflected in the wage-level for the proffered position. However, as the petitioner has not established that the proffered position qualifies as a specialty occupation, we need not, and will not address this issue further.

B. Beneficiary's Qualifications

We do need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

IV. CONCLUSION AND ORDER

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

ORDER: The appeal is dismissed.