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



U.S. Citizenship
and Immigration
Services



JUL 08 2015

DATE:

PETITION RECEIPT #:



IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an enterprise established in [REDACTED] with 47 employees, "providing employers an online employment network, improving labor market efficiency." In order to employ the beneficiary in what it designates as a communications specialist, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner has not established that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

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

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

II. SPECIALTY OCCUPATION

A. The Law

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

- (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.

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

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

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

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

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

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

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. The Proffered Position

The petitioner indicated on the Form I-129 that it seeks the beneficiary's services as a communications specialist to work on a full-time basis for an annual salary of \$50,000 per year.

In a letter of support dated March 6, 2014, the petitioner stated that the beneficiary will be responsible for the following duties:

- Provide all media (television, cable TV, newspapers, radio, web sites, etc.) with notices of upcoming productions, newsworthy events, and advertising
- Identify main client groups and audience and determine the best way to reach them
- Act as a spokesperson or information source for media inquiries
- Help organization communicate effectively with the public whether in English or Chinese
- Develop organization's public image and identity
- Assist and inform an organization's executives and spokespeople of upcoming events
- Devise advertising and promotion programs
- Develop and carry out communications strategies for [the petitioner]
- Create and design organizational pamphlets, marketing material and publications for use internally and outside the business

- Develop strategies for public relations that will market and promote products, programs and services

[The beneficiary] will be responsible for developing and distributing all publicity for every production and for general activities. Notices, calendar events, publicity with photographs, and general news articles are part of the regular publicity events. She will also be responsible for reviewing all television advertising, including posters, flyers, or mailers, for all productions and for arranging media interviews. The Communications Specialist will direct, write and produce all copy for television productions. She will also conduct all on-air interviews whether in English or Chinese. [The beneficiary] will write and produce complete news stories including writing, shooting and cutting films, and serve as the anchor for the stories she produces.

The Communications Specialist will help to clarify the [petitioner]'s point of view to its members and prospects through media releases and interviews. They observe social, economic, and political trends that might ultimately affect the [petitioner], and recommend ways to enhance the [petitioner]'s image based on those trends. [The beneficiary] will arrange interviews and translate daily news stories from foreign (Chinese) news agencies or websites. She will be responsible for directing, writing and producing bilingual documentaries for [the petitioner's] member companies.

The requirements for the position are a Bachelor's Degree in Public Relations, Broadcasting or Communications. This is a highly complex and specialized position.

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

C. Analysis

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of

occupations it addresses.² As noted above, the petitioner submitted an LCA in support of this position certified for a job offer falling within the "Public Relations Specialists" occupational category.

The *Handbook* states the following regarding the educational requirements necessary for entrance into this field:

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

Education

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Public Relations Specialists, at <http://www.bls.gov/ooh/media-and-communication/public-relations-specialists.htm#tab-4> (last visited on June 26, 2015).

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

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

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide

² The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2014-15 edition available online.

persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

In response to the RFE, the petitioner submitted a letter dated June 13, 2014 from [REDACTED] Executive Director of [REDACTED], written to the petitioner. The letter explained that it has entered into a partnership with the petitioner and as a "part of this partnership, we engage in marketing and strategic communication." [REDACTED] also stated that during this partnership, it is important that the petitioner's staff members engaging in marketing and strategic communication on its behalf "possess a bachelor's degree in a relevant field at an accredited college or university."

We reviewed the letter in its entirety; however, we conclude that the letter from [REDACTED] is not persuasive in establishing the proffered position qualifies as a specialty occupation position as it does not constitute probative evidence of the proffered position satisfying any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A). [REDACTED] indicates that according to O*NET, public relations specialists "overwhelmingly possess a Bachelor's degree." However, O*NET OnLine as referenced by [REDACTED] is insufficient to establish that the proffered position qualifies as a specialty occupation. In fact, O*NET does not state a requirement for a bachelor's degree. Specifically, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O*NET information is not probative evidence to establish that the proffered position is a specialty occupation.

Further, the petitioner did not provide sufficient information regarding the basis of [REDACTED] expertise on this particular issue.³ While the letter indicates that [REDACTED] is an executive director of NASWA, there is no additional evidence to establish his expertise pertinent to assessing the minimum requirements for entry into the proffered position. Without further clarification, it is not apparent how his position would translate to expertise or specialized knowledge regarding educational requirements for the proffered position as a communications specialist.

³ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. See 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

Further, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

Therefore, we conclude that the opinion letter rendered by [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions.

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

The requirement of a baccalaureate or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

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

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. This, we incorporate by reference the previous discussion on this matter. Further, while we acknowledge that the petitioner submitted a letter from [REDACTED], as discussed above, [REDACTED] letter is not probative evidence to establish that the degree requirement is common to the industry.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organization, the petitioner provided job advertisements. However,

upon review of the evidence, we find that the petitioner's reliance on the job announcements is misplaced.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In the Form I-129, the petitioner stated that it provides employers an online employment network, with 47 employees, that was established in [REDACTED] and had a gross annual income of \$10 million. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 561300. According to the NAICS website, this code is not valid.

We reviewed the job advertisements submitted by the petitioner. Notably, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. Further, as they are only solicitations for hire, they are not evidence of what qualifications were ultimately required for the positions. Moreover, upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

For example, the advertisements include positions with [REDACTED] (a small business information technology firm); [REDACTED] (over [REDACTED] years of expertise in the IT staffing arena); [REDACTED] (a staffing company)⁴; [REDACTED] (a [REDACTED]-year successful small business federal consulting firm); and, [REDACTED] (employment agency for [REDACTED]). While some employers appear to be in related industry, the petitioner has not provided information regarding which aspects or traits it shares with the advertising organizations. Consequently, the record lacks sufficient information regarding the advertising employers to conduct a legitimate comparison of the organization to the petitioner.

Further, the petitioner has not established that the advertisements are for parallel positions. The petitioner did not provide additional information to sufficiently establish that the primary duties and responsibilities of the advertised positions are parallel to the proffered position. Further, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For

⁴ The petitioner noted that [REDACTED] employs a similar number of employees; however, the size of the firm alone does not demonstrate that the two firms are similar.

example, the posting for [REDACTED] requires a bachelor's degree in communications, journalism, English, public relations, marketing or a related discipline. As discussed, 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. In addition, the advertised positions appear to be for more senior positions than the proffered position. For example, the position with [REDACTED] requires 7 – 10 years experience; [REDACTED] requires 3 – 5 years experience; and, [REDACTED] requires 6 years experience. As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I, an entry-level position relative to others within the occupation.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.⁵

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

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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

⁵ It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner has not demonstrated what inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected outweigh the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted printouts from its website. While the petitioner submitted documents regarding its business operations, the petitioner did not explain how the documents relate to the beneficiary's duties, and the evidence does not establish the relative complexity or uniqueness of the proffered position. A review of the record of proceeding indicates that the petitioner has not demonstrated that the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Additionally, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

More specifically, the job description lacks sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. For example, the petitioner stated that the beneficiary will "provide all media (television, cable TV, newspapers, radio, web sites, etc.) with notices of upcoming productions, newsworthy events, and advertising"; "act as a spokesperson or information source for media inquiries"; "devise advertising and promotion programs"; "develop and carry out communications strategies for [the petitioner]"; and "develop strategies for public relations that will market and promote products, programs and services." The evidence of record contains neither substantive explanation nor documentation showing the substantive nature of the work and associated applications of specialized knowledge that would be involved in the referenced tasks.

Upon review, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. The petitioner stated that the beneficiary is qualified for the position based on her degree that is the equivalent of a four year Bachelor's Degree in English Broadcasting from an accredited US college or university. However, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

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

In accordance with the relevant DOL explanatory information on wage levels, a Level I position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to only have a basic understanding of the occupation. The wage-rate indicates that the

beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.⁶ 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."⁷ The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty is not required for the proffered position.

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

*The employer normally requires at least a bachelor's degree
in a specific specialty, or its equivalent, for the position*

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires the employer to demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

⁶ The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

⁷ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.

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

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

The petitioner provided names of some of its current employees and their positions, but did not provide information regarding its hiring history for the position of communications specialist. The list includes the VP of marketing and communications, marketing manager, PR manager, and communications manager. While the petitioner submitted resumes and W-2 forms for these employees, the petitioner did not provide job duties of these employees to establish that their positions are similar or parallel to the proffered position. It must be noted that the educational level of employees who hold positions that are not the proffered position (or parallel to that position) is not relevant to the instant issue of whether the proffered position qualifies as a specialty occupation. Further, we also note that the petitioner indicates that these employees hold degrees in various specialities such as business, mass communication, graphic design, marketing and more. Again, 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.

Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent. As the record of proceeding does not demonstrate that the

petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent

Next, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

The petitioner claims that the nature of the specific duties of the position in the context of its business operations is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We reviewed the petitioner's statements regarding the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

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

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

⁸ Since the identified basis for denial is dispositive of the petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.

III. CONCLUSION AND ORDER

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.⁹

ORDER: The appeal is dismissed.

⁹ As the identified grounds of ineligibility are dispositive of the petitioner's appeal, we need not address any additional issues in the record of proceeding