



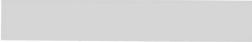
U.S. Citizenship
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Services

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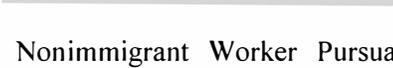


JUN 02 2015

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:



INSTRUCTIONS:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL HISTORY

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as engaging in the business of "[s]oftware development specializing in fraud prevention solutions." The petitioner indicates on the Form I-129 that it was established in [REDACTED], and has 132 employees world-wide. In order to employ the beneficiary in what it designates as a full-time "Partner Marketing Manager" 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). Thereafter, the petitioner responded to the Director's RFE. The Director reviewed the information and determined that the petitioner did not establish eligibility for the benefit sought. The Director denied the petition, finding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation. The petitioner now files this appeal, asserting that the Director's decision was erroneous.

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

As will be discussed below, we have determined that the director did not err in her decision to deny the petition. For this reason, the appeal will be dismissed, and the petition will be denied.

II. EVIDENTIARY STANDARD ON APPEAL

We affirm that, in the exercise of our appellate review in this matter, as in all matters that come within its purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence submitted in support of this petition, we find that the record does not contain sufficient relevant, probative, and credible evidence to lead us to believe that it is "more likely than not" or "probably" true that the proffered position qualifies as a specialty occupation.

III. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title "11-2021, Marketing Managers" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

In a letter dated April 2, 2014, the petitioner described itself as "the market leader in device identification technology and web fraud detection." The petitioner claimed that "[o]n October 1, 2013, [the petitioner] was acquired by [REDACTED] the leading global information services company to strengthen [REDACTED] global web fraud detection and risk-based identification authentication capabilities." The petitioner stated that "[t]he position of Partner Marketing Manager requires at least a Bachelor's degree or equivalent in Marketing, Business Administration, Communications, or closely related discipline [*sic*]." The petitioner further provided a list of job duties that the beneficiary would be responsible for in his capacity of partner marketing manager, as follows:

- Driving revenue through [REDACTED] channel partners worldwide via supporting the sales team in the recruitment and launch of new channel partners and creating a Channel Marketing Program infrastructure;
- Architecting, executing, managing, and monitoring all channel marketing programs;
- Identifying program opportunities, brand synergies, and potential impact/visibility opportunities;
- Working with the Marketing Communications Manager of the development of channel program positioning, messaging, and strategy for incorporation into marketing materials;
- Planning, developing, and executing partner communications;
- Executing and creating partner collateral that ensures our brand is consistently portrayed across all partner activities;
- Working with sales infrastructure to monitor and measure sales via the channel; and
- Designing and implementing measurements to quantify revenue generated from programs executed in the channel.

In response to the Director's request for additional information about the company, the petitioner again highlighted that it "is a part of the [REDACTED] group of companies." In a separate letter, the petitioner reaffirmed that the proffered position requires at least a Bachelor's degree in Marketing, Business Administration, Communications, or a closely related discipline.

In the appeal brief, the petitioner contends that the proffered position is distinguishable from the general classification because "[t]he Partner Marketing Manager is the principal architect of all channel marketing programs worldwide" and has a "heavy focus on theories and principles of business management and development the creation of marketing plans [*sic*]." The petitioner also highlights the proffered salary of \$120,000 per year.

IV. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence of record does not establish that the position as described constitutes a specialty occupation.

A. The Law

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also*

COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp., 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

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

B. Analysis

We first find that the evidence of record does not sufficiently establish the substantive nature of the proffered position. In establishing the position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations. The petitioner has not done so here.

The petitioner has described the duties comprising the proffered position in relatively abstract and repetitive terms. That is, the descriptions lack sufficient detail and concrete explanation to establish the

substantive nature of the work to be performed. For example, the petitioner listed one of the beneficiary's job duties as "[d]riving revenue through [REDACTED] channel partners worldwide via supporting the sales team in the recruitment and launch of new channel partners and creating a Channel Marketing Program infrastructure." However, the petitioner did not further elaborate on the specific tasks, methodologies, and applications of knowledge that would be required in furtherance of this overarching duty. Significantly, the petitioner has not provided detailed descriptions and documentation establishing to whom or what these "[REDACTED] channel partners," "sales team," and "Channel Marketing Program" refer, so as to show the range and volume of the services that the beneficiary would provide.

As an example of the repetitive nature of the provided descriptions, the petitioner stated that the beneficiary would spend 25% of his time on the above-stated job duty of "[d]riving revenue through [REDACTED] channel partners worldwide," in which capacity he would be responsible for "[a]rchitecting, executing, managing, and monitoring all channel marketing programs." However, the petitioner then assigned another 10% of the beneficiary's time to the identical duty of "[a]rchitecting, executing, managing, and monitoring all channel marketing programs." Furthermore, the petitioner stated that the beneficiary would spend 15% of his time on duties including "working with sales infrastructure to monitor and measure sales via the channel" and then assigned another 15% to the identical duty of "[w]orking with sales infrastructure to monitor and measure sales via the channel." Almost all of the stated job duties involve some aspect of creating, developing, and/or executing channel partnerships and channel marketing programs, but the petitioner has not adequately explained how each listed job duty differs from the other. Overall, we find that the descriptions of the duties of the proffered position do not adequately convey the substantive work that the beneficiary would perform within the petitioner's business operations.

As the evidence of record is insufficient to establish the substantive nature of the proffered position, we consequently cannot find that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Accordingly, as it has not been established that the petitioner satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will address each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

1. 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)(I), which is satisfied by establishing that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition.

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.¹ As noted above, the petitioner submitted an LCA in support of this position certified for a job offer falling within the "Marketing Managers" occupational category.

The *Handbook* states the following with regard to the educational requirements necessary for entrance into the Marketing Managers occupational group:

Most marketing managers have a bachelor's degree. Courses in business law, management, economics, finance, computer science, mathematics, and statistics are advantageous. For example, courses in computer science are helpful in developing an approach to maximize traffic through online search results, which is critical for digital advertisements and promotions. In addition, completing an internship while in school is highly recommended.

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-4> (last visited May 20, 2015).

The *Handbook* does not indicate that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into this occupation. That is, while the *Handbook* states that "[m]ost marketing managers have a bachelor's degree," it does not state whether the bachelor's degree must be in a specific specialty, and if so, which specific specialty. As was noted previously, we interpret 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. In addition, the *Handbook* states that courses in a wide range of subjects including business law, management, economics, and computer science are advantageous. The petitioner has not adequately explained how the *Handbook* supports the conclusion that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for the proffered position.²

¹ 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.

² On appeal, the petitioner cites the unpublished court decision in *Unico American Corp. v. Watson*, ___ F. Supp. ___, 1991 WL 11002594 (C.D. Cal. 1991), to state that we should "take a more holistic view of a position in lieu of relying on 'standardized government classification systems'" (e.g., the *Handbook*). The

The materials from DOL's Occupational Information Network (O*NET) cited by the petitioner do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET is not particularly useful in determining whether a baccalaureate degree *in a specific specialty*, or its equivalent, is a requirement for a given position, as O*NET makes no mention of the specific field of study from which a degree must come.

The record of proceeding does not contain documentary evidence from or reference any other relevant authoritative source establishing that the proffered position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

2. The degree requirement is common to the industry in parallel positions among similar organizations

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are 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.

petitioner, however, has furnished no evidence to establish that the facts of the instant petition are analogous to those in this unpublished decision. 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)).

In any event, we are not running counter to the proposition for which the petitioner cites this decision, for we base our decision upon the totality of the evidence in the record of proceeding, and without sole or excessive reliance upon the relevant information contained in the *Handbook*. Furthermore, 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 cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on us outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

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 the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there submissions from professional associations, firms, or individuals in the petitioner's industry. The evidence of record does not contain other evidence relevant to the first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

We find that the petitioner has not sufficiently developed relative complexity or uniqueness as aspects of the proffered position. In this regard, we refer to our earlier discussions and findings about the record's generalized descriptions of the proffered position and its proposed duties, which we incorporate by reference into our analysis here. Not only has the petitioner described the position in broad and generalized terms, but the petitioner has not sufficiently distinguished the proffered position from other positions in the Marketing Managers occupational group that can be performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

On appeal, the petitioner contends that the director "failed to give proper reverence to the duties of the offered position." In particular, the petitioner emphasizes that the beneficiary will serve as "the principal architect of all channel marketing programs worldwide." The petitioner asserts that this duty differentiates the proffered position from the general classification which "plans, directs, and coordinates marketing policies for a company." However, the petitioner's assertions are unpersuasive. The petitioner has not explained how the proffered duty of being the "principal architect of all channel marketing programs worldwide" differs from the general duty of planning, directing, and coordinating marketing policies for a company. As previously discussed, the petitioner has not sufficiently described and documented the full scope of its relevant operations. For example, there is no explanation of what the petitioner's "channel marketing program" entails, who its channel partners are, how many channel partners are involved, and how many employees and individuals will be involved, among other relevant factors. While the petitioner has repeatedly emphasized that it was acquired by Experian, the petitioner has not explained how this acquisition reflects upon the scope of business activities actually involving the beneficiary. We also fail to see how the proffered salary of \$120,000 per year sufficiently distinguishes and elevates the proffered position from others within the same occupational group.³ Thus, without additional information

³ For comparison, the Level I prevailing wage for Marketing Managers in the [redacted] California, Metropolitan Statistical Area (MSA) (where the petitioner's office is located), for the period 7/2013 – 6/2014, is \$106,933. The prevailing wage for a Level II position in the same county during the same period is \$140,525. For more information regarding the wages for "Marketing Managers" – SOC

about the petitioner's relevant operations and the range and volume of services that the beneficiary would be providing, we cannot find that the proffered duties are more complex or unique than those normally associated with similar positions located within the "Advertising, Promotions and Marketing Managers" occupational group.

As the evidence of record therefore does not establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

4. The employer normally requires a degree, 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 entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring a degree in a specific specialty, or its equivalent, in its prior recruiting and hiring for the position.⁴ 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.⁵

(ONET/OES Code) 11-2021, in the [REDACTED] California MSA for the above period, see [http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-2021\[REDACTED\]:year=14&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-2021[REDACTED]:year=14&source=1) (last visited May 20, 2015).

⁴ While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. See *Caremax Inc. v. Holder*, ___ F.Supp. 2d ___, 2014 WL 1493621 (N.D. Cal. 2014) ("If this is [the petitioner's] first-ever public relations specialist position, then the company cannot claim that it typically requires a bachelor's degree in English.")

⁵ 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 at 387. 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 a specific specialty as the minimum for entry into the occupation as required by the Act.

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

In support of the initial petition, the petitioner stated that the proffered position requires "at least a Bachelor's degree or equivalent in Marketing, Business Administration, Communications, or [a] closely related discipline." The petitioner further stated in response to the RFE that "a bachelor's degree in the specified majors has been, and continues to be a requirement for the offered position," and that the company "strictly hires applicants with at least a bachelor's degree in the designated practice area." In support, the petitioner submitted the job posting for the proffered position, which states the degree requirement as a "Bachelor's Degree (Marketing, Communications or related field preferred)."

Although the petitioner states in its letters that the company has normally required at least a bachelor's degree in Marketing, Communications, or closely related disciplines, the petitioner's claims, alone, are not persuasive. The petitioner has not submitted sufficient documentation to support its assertions. 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)). More specifically, the petitioner's own job posting for the proffered position undermines the petitioner's eligibility under this criterion, as the posting specifically states that a bachelor's degree in Marketing, Communications, or a related field is "preferred." A preference, however, is not a requirement. The petitioner has not submitted any other evidence pertaining to its normal employment practices.⁶

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).

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

We find that 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.

particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See id.* 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").

⁶ Even if the job posting had stated that a bachelor's degree in Marketing, Communication, or related fields is "required" rather than "preferred," this single job posting, without more, would still be insufficient absent evidence of how representative this job posting is of the petitioner's recruiting and hiring history.

As reflected in this decision's earlier discussions and findings regarding the record's generalized duty descriptions which we hereby incorporate into this present analysis, the duties as described in the record of proceeding do not show the level of specialization and complexity required to satisfy this criterion. That is, the duties of the proposed position are not presented with sufficient detail and explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or the equivalent. By the same token, the nature of the proposed duties are not developed with sufficient substantive detail to distinguish them from the nature of the duties of positions within the Marketing Managers occupational group whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty. We again refer the petitioner to the *Handbook* and the pertinent sections that we have quoted from it, which indicate that the duties of Marketing Managers are not usually associated with the attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

For the reasons discussed above, we conclude that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that the duties of the proffered position are 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. The evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

C. Business Administration

Finally, there are the adverse implications regarding the acceptability of a degree in Business Administration with no further specification.

The petitioner stated that the proffered position requires "at least a Bachelor's degree or equivalent in Marketing, Business Administration, Communications, or closely related discipline." The petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

As discussed *supra*, 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.⁷ Although a general-purpose bachelor's degree, such as a degree in 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 139, 147 (1st Cir. 2007).⁸

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion further precludes a finding that the proffered position qualifies for classification as a specialty occupation.

V. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the proffered position, as described, more likely than not constitutes a specialty occupation.⁹ Accordingly, the appeal will be dismissed and the petition will be denied.

⁷ In promulgating the H-1B regulations, the former 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.*

⁸ 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.

⁹ As this matter is dispositive of the petitioner's appeal, we will not address any of the additional deficiencies we have identified on appeal.

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

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