



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 01 2015**

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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:

[REDACTED]

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 on appeal. The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a two-employee "Printing and Publishing Magazine" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Computer Graphic Designer" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director denied the petition, finding that the evidence did not establish that the proffered position qualifies as a specialty occupation. On appeal, the petitioner asserts that the Director's decision was erroneous.

The record of proceeding contains the following: (1) the Form I-129 and supporting documentation; (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; (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation; (6) our Notice of Derogatory Information and Intent to Dismiss (NODI); and (7) the petitioner's response to the NODI. We have reviewed the record in its entirety before issuing our decision.

Upon review, we agree with the Director that the evidence fails to establish that the proffered position is a specialty occupation. The appeal will be dismissed.

I. FACTUAL AND PROCEDURAL HISTORY

As noted above, the petitioner describes itself on the Form I-129 as a two-employee "Printing and Publishing Magazine" established in [REDACTED]. In support of the petition, the petitioner submitted a letter dated March 18, 2013 stating that it "publishes a Persian Magazine [REDACTED] [and] is a diverse enterprise specializing in an independent, bilingual, non-political, non-religious journal." The petitioner stated that it "contract[s] with a full staff of a publishing company where they generate and publish our magazine." The petitioner further stated that due to its "rapidly increasing project load" and "goal [] to expand and diversify the scope of our magazine," it would like to employ the beneficiary as a computer graphic designer to perform the following duties:

- Design and layout art and graphics in Persian on topics related to the Persian communities (over 600,000) in the United States[;]
- Prepare layouts using special Persian Calligraphy language desktop publishing software[;]
- Develop the magazine's [REDACTED] interactive web site using Persian Calligraphy language based web development software[;]

- Confer with clients to discuss and determine layout design[;]
- Study illustrations and photographs to plan presentation of materials, products, or services with clients[;]
- Produce visual solutions to the communication needs using a mix of creative skills and commercial awareness[;]
- Awareness of current fashions in the visual arts, working knowledge of the latest computer packages and an understanding of material costs and time limits, all of which can impact on the design[;]
- Creates professional designs and layouts for promotional materials including direct mailings, handouts, advertisements, posters, signs, logos, and other visual layouts[;]
- Prepare new and unique illustrations, innovative layout prints and rough sketches of presentation and organization brochures and design graphics for website in line with branding guidelines[;]
- Determines style, technique, and medium best suited to organization promotion strategies[; and]
- Assists in copywriting as necessary and performs typesetting for forms and publications[.]

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 "27-1024, Graphic Designers" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level III position.

The petitioner submitted, *inter alia*, a letter from [REDACTED] confirming that the petitioner has been utilizing its "printing and pre-press services since 2001 for the full color [REDACTED] magazine."

The petitioner submitted one of its recent publications. In pertinent part, the magazine identifies the signatory of the instant petition, [REDACTED] as the publisher, and [REDACTED] as the Senior Editor.

The petitioner also submitted various documents relating to the beneficiary's qualifications for the proffered position, including: evidence that the beneficiary received the equivalent of a U.S. bachelor's degree in Computer Engineering; the beneficiary's transcripts from [REDACTED] showing that she obtained a bachelor's degree in Computer Engineering- Software; the beneficiary's resume; and a letter from her former employer, [REDACTED]

confirming the beneficiary's full-time employment from September 1998 to October 2001, and then on a contract basis from February 2002 onwards. This letter stated that the beneficiary provided "professional services in the fields of Programming, Systems Design, Graphic Design, Network Management, Software Management and Website Design," and also "successfully developed networks and data transfer systems."

The Director issued an RFE in this matter. The Director requested, *inter alia*, evidence that the proffered position qualifies as a specialty occupation, and evidence to establish that the beneficiary is qualified to perform the proffered position.

In response to the RFE, the petitioner submitted, *inter alia*, a letter dated November 26, 2013 providing another description of the duties of proffered position, along with percentages of time spent on each duty, as follows:

- Design and layout art and graphics of the magazine in Farsi/English (45%)
- Develop the magazine's interactive web site (15%)
- Keeping update of all new and emerging in Publishing technologies. Awareness of current fashions in the visual arts (5%)
- Ensures operation of computer equipments and preventative maintenance (5%)
- Meeting clients or account managers to discuss the business objectives and developing a concept to suit their purpose (15%)
- Working as part of a team with printers, copywriters, photographers, designers, account executives, etc. (10%)
- Creates professional designs and layouts for promotional materials and illustrations, innovative print's layout presentation (5%)

Level of Responsibility

[The beneficiary] will act as a senior graphic designer and she will be responsible for the design solutions from concept to completion. She will generate comps, design and create layouts which will contain special Farsi and English calligraphy and provide the final art of the graphic design. Her responsibility is to design using graphic applications such as collaborative material for the magazine to corporate identify and branding, design new unique and innovative layout prints, to provide rough sketches for various organizational brochures as well as other organizational promotional strategies, copywriting as necessary, perform type setting for forms and publications, film tinting and multimedia interfaces, from conception to completion.

In the same letter, the petitioner listed the employees who "worked or are working for the company." Specifically, the petitioner currently employs: (1) [REDACTED] Senior Editor (part-time), who is "[i]n charge of Editing and modifying the ads"; and (2) [REDACTED], Associate Editor (part-time), who is "[i]n charge of Editing the Persian language on the ads." The petitioner previously employed [REDACTED] Project Manager (part-time), as an "Art Director, Web Designer, and Marketing."

With respect to the nature of the petitioner's business and its need to employ the beneficiary, the petitioner stated:

Due to increased demand and changes in the graphic design component of the promotional industry, [the petitioner] ("Company") requires a full-time bi-lingual Computer Graphic Designer. The Company has not had a Computer Graphic Designer previously. Hiring independent contractors with the required specifications to provide such services would be extremely difficult to locate, very costly and therefore not economically efficient. This type of expense and delay would have an adverse impact on the Company.

Further, because of such changes, the demand for our promotional products has also substantially increased; hence, we are now requiring a senior level Computer Graphic Designer to meet those demands. Our customers are well aware of the advances in the computer graphic design field and demand that our company be able to provide their products accordingly.

Furthermore, our Company deals with many professionals such as attorneys, doctors and other professionals who currently advertise in the Company's publication as well as famous writers who mostly hold PhD degrees, that contribute various articles to the publication to be viewed by the community and its readers. Thus, we feel that dealing with such group of highly educated professionals and the demand associated with their products for purpose of publication, requires a high demand to create high standard marketing to design promotional materials for their businesses. To meet the demand of our current and future clients and other professionals involved in this publication and to ensure the success of our company we must hire an employee with at least a bachelor's degree in Computer Graphic Design with excellent communication skills as well as other required skills, so that she would be able to absorb the high level dialogue between them and then to reflect the same in her performance of the project as a graphic design work.

The petitioner submitted, *inter alia*, letters and vacancy announcements from other companies, as well as a vacancy announcement purportedly placed by the petitioner.

The petitioner submitted an evaluation from Dr. [REDACTED] Professor Art-Graphic Design, [REDACTED], concluding that the beneficiary has the equivalent of a

bachelor's degree in graphic design based on a combination of her education and employment experience. Dr. [REDACTED] also concludes that "the position of Graphic Designer qualifies as a 'Specialty Occupation' as per the Immigration (USCIS) regulations."

The petitioner submitted a second letter from [REDACTED] verifying the beneficiary's employment since 1998 "by providing her professional services in the field of software programming, Systems Design and Graphic Design for our Newsletters and publications." The petitioner also submitted a third letter from [REDACTED] concluding that the beneficiary qualifies as an "expert in Graphic Design." This letter provided a more detailed list of the beneficiary's prior job duties.

The Director denied the petition, concluding that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation. In denying the petition, the Director found that the duties of the proffered position are more consistent with those of a desktop publisher than a graphic designer.

The petitioner filed an appeal. On appeal, the petitioner asserted that the proffered position is consistent with those of a graphic designer rather than a desktop publisher. The petitioner emphasized that "[t]he position requires creating new graphics and publications from scratch, with layout and design in Farsi and using Farsi in the design . . . [and] calligraphy and art in Farsi for the final design." The petitioner also emphasized the required "extra computer skills beyond design: specifically, website development . . . [and] ensuring operation of computer equipment and performing preventative maintenance."

During our preliminary review of the appeal, we noted concerns regarding the petitioner's corporate status and business operations. We consequently issued a NODI. In response to the NODI, the petitioner provided evidence that it has bona fide business operations. The petitioner also asserted that it has a bona fide job offer and need for a graphic designer position. In a separate letter, the petitioner's President stated that it "continues to require a professional graphic designer to assure that our online and print magazine remains competitive." The petitioner stated that it publishes the magazine [REDACTED] in both physical print form and online at [REDACTED].¹ The petitioner stated: "We require a professional graphic designer in order for our print and online magazine to remain competitive. We fully expect the graphic designer to increase the quality of our product and to help sustain our reputation as the lead Farsi speaking magazine in South California."

¹ We note that [REDACTED] is not a working web address.

II. SPECIALTY OCCUPATION

The primary issue to be addressed is whether the petitioner has demonstrated that the proffered position qualifies as a 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.

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.

B. Preliminary Findings

The Director found that the proffered position is more similar to a desktop publisher than a graphic designer. We agree with this finding.

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 that it addresses.² The *Handbook* states the following about the duties of desktop publishers:

Desktop publishers use computer software to design page layouts for newspapers, books, brochures, and other items that are printed or put online. They collect the text, graphics, and other materials they will need and format them into a finished product.

Duties

Desktop publishers typically do the following:

- Gather existing materials or work with designers and writers to create new artwork or text
- Find and edit graphics, such as photographs or illustrations
- Use scanners to turn drawings and other materials into digital images
- Import text and graphics into desktop publishing software programs
- Position artwork and text on the page layout
- Select formatting properties, such as text size, column width, and spacing
- Check proofs, or preliminary layouts, for errors and make corrections
- Finalize formatted documents for printing or electronic publication
- Send final files to a commercial printer or print the documents on a high-resolution printer

Desktop publishers use publishing software to create page layouts for print or electronic publication. In addition to designing pages, desktop publishers may edit or write text. Some desktop publishers might be responsible for correcting spelling, punctuation, and grammar or for writing original content themselves.

Desktop publishers' responsibilities may vary widely from project to project and employer to employer. Smaller firms typically use desktop publishers to perform a wide range of tasks, while desktop publishers at larger firms may specialize in one part of the publishing process.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

Desktop publishers work with other design and media professionals, such as writers, editors, and graphic designers. For example, they work with graphic designers to come up with images that complement the text and fit the available space.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Desktop Publishers," <http://www.bls.gov/ooh/office-and-administrative-support/desktop-publishers.htm#tab-2> (last visited Apr. 15, 2015).

On the balance, we agree with the Director that the duties of the proffered position are more similar to desktop publishers than graphic designers. Most of the duties of the proffered position are centered around preparing and designing the magazine's page layouts, including the duties of "[d]esign and layout art and graphics," "[p]repare layouts using special Persian Calligraphy language desktop publishing software," and "[c]reat[ing] professional designs and layouts for promotional materials." These duties are consistent with the *Handbook's* summary of the duties of desktop publishers, i.e., that they "use computer software to design page layouts for newspapers, books, brochures, and other items that are printed or put online." *Id.*

The petitioner asserts that the proffered position is more similar to a graphic designer because the proffered duties are "design and development focused" and "involve[] creating original graphics." For instance, the petitioner highlighted that the beneficiary will spend 45% of her time on "[d]esign and layout **art and graphics** of the magazine in Farsi/English." The problem here is that the petitioner did not clarify what proportion of this 45% of time will be spent on "[d]esign," and what proportion will be spent on "[l]ayout." The petitioner also asserted that the beneficiary will be responsible for "additional responsibilities" including "**design[ing] solutions from concept to completion**," "**provid[ing] the final art of the graphic design**" and "**design[ing] using graphic applications**." Without knowing the percentages of time spent on these particular duties, however, we cannot find that the proffered position primarily involves creating new, original designs consistent with a graphic designer position.

Moreover, the petitioner states that the proffered position is more like a graphic designer because it "**combines design with computer skills and knowledge of computer systems**." The petitioner asserts that computer skills and knowledge are not required of desktop publishers. In particular, the petitioner highlights that 15% of the beneficiary's time will be spent on "[d]evelop[ing] the magazine's interactive web site," and another 5% will be spent on "[e]nsur[ing] operation of computer equipments and preventative maintenance." However, these duties are outside of the scope of duties for graphic designers. While the *Handbook* does state that graphic designers "[d]evelop graphics for . . . websites," it does not state that graphic designers develop the actual websites or are responsible for computer maintenance. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Graphic Designers," <http://www.bls.gov/ooh/arts-and-design/graphic-designers.htm#tab-2> (last visited Apr. 15, 2015).

Furthermore, contrary to the petitioner's assertions, the *Handbook* indicates that desktop publishers also need computer skills and knowledge of computer systems. The *Handbook* states that the duties

of desktop publishers include "us[ing] computer software to design page layouts" and "us[ing] publishing software to create page layouts for print or electronic publication." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Desktop Publishers," <http://www.bls.gov/ooh/office-and-administrative-support/desktop-publishers.htm#tab-2> (last visited Apr. 15, 2015). In fact, the *Handbook* specifically states that "[c]omputer skills, including knowledge of desktop publishing software, are important" for desktop publishers. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Desktop Publishers," <http://www.bls.gov/ooh/office-and-administrative-support/desktop-publishers.htm#tab-4> (last visited Apr. 15, 2015). As such, the petitioner has not sufficiently explained and documented why the duties of the proffered position are more similar to those of a graphic designer than a desktop publisher by virtue of its computer skills and knowledge.

In concluding that the proffered position is not a graphic designer position, we must also take into account the lack of evidence establishing that the petitioner actually provides graphic design services. Specifically, the petitioner asserts that "the demand for our promotional products has also substantially increased" and that there is a "high demand to create high standard marketing to design promotional materials for their businesses."³ However, there is insufficient evidence to establish that the petitioner actually designed and created the promotional materials for the companies advertising in its magazines, and consequently, that "the demand for [its] promotional products has also substantially increased." For instance, there are no invoices or other objective evidence establishing that the petitioner created and designed the advertisements for [REDACTED] and the [REDACTED] which appear in its [REDACTED] 2012 magazine. There is also no explanation, corroborated by objective evidence, establishing who originally designed and created the cover pages and the other visual images appearing in the petitioner's monthly magazines.⁴

Thus, considering the duties of the proffered position and the lack of evidence establishing that the petitioner provides graphic design services, we are not persuaded by the petitioner's assertions that the proffered position is a graphic designer position. We find that the position is more likely than

³ The petitioner's letterhead suggests that it provides services in graphic design, printing, and publishing.

⁴ Here, we note inconsistencies with regards to the duties of the petitioner's employees. On appeal, the petitioner now asserts that its three present and former employees "perform graphic designer duties." However, the petitioner previously stated that it has never had a Computer Graphic Designer previously, and the listed duties for its three employees did not include any graphic design services. The petitioner has not submitted an explanation, corroborated by objective evidence, resolving this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, we note that the petitioner "contract[s] with a full staff of a publishing company where they generate and publish our magazine." However, there is no further clarification on what particular duties this publishing company provides.

not a desktop publisher position, and any further discussion of the proffered position will proceed under this finding.

C. Discussion of Criteria

We will now discuss whether the proffered position qualifies for classification as a specialty occupation under the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As stated above, we recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.

The *Handbook* subchapter on "How to Become a Desktop Publisher" states the following:

Desktop publishers have a variety of educational backgrounds, but most have earned some form of postsecondary degree or award, such as an associate's degree.

Education

Desktop publishers have various educational backgrounds, but postsecondary education, such as an associate's degree, is typical. Workers usually learn some of their skills on the job. Computer skills, including knowledge of desktop publishing software, are important.

Although many desktop publishers have earned associate's degrees, others have earned postsecondary nondegree awards. These usually take less than 2 years to complete, or they sometimes earn bachelor's degrees. Experience in a related field can sometimes substitute for education.

Those who earn degrees usually study fields such as graphic design, graphic arts, or graphic communications. Community colleges and trade and technical schools also may offer desktop publishing courses. These classes teach students about desktop publishing software used to format pages and how to import text and graphics into electronic page layouts.

Id., at <http://www.bls.gov/ooh/office-and-administrative-support/desktop-publishers.htm#tab-4> (last visited Apr. 15, 2015).

The *Handbook* does not indicate that a desktop publisher position, as a category, qualifies for classification as a specialty occupation. More specifically, the above excerpt from the *Handbook* states that "[d]esktop publishers have various educational backgrounds, but postsecondary education, such as an associate's degree, is typical." *Id.* The above excerpt also states that "many

desktop publishers have earned associate's degrees" and that "others have earned postsecondary nondegree awards." *Id.* The *Handbook*, therefore, does not support the proposition that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or the equivalent, to satisfy this first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A); therefore, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. In this matter, the petitioner has not provided sufficient evidence.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, 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 a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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

Under this criterion, the petitioner submitted a letter from the [redacted] attesting that "it is [the] company's policy to employ Graphic Designers with a bachelor's degree" in order to perform job duties similar to those of the proffered position. The petitioner also submitted two identical letters from [redacted] expressing its intent to hire "2 Graphic Designers with a bachelor's degree" in order to perform job duties similar to those of the proffered position. However, contrary to the purpose for which they were submitted, these letters do not state that a bachelor's degree *in a specific specialty*, or its equivalent, is required for the positions. Furthermore, the petitioner has not supplemented the record with sufficient information to establish

that [REDACTED] and [REDACTED] are similar to the petitioner. For the petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization.⁵ 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.

In addition, the petitioner submitted numerous vacancy announcements from other companies including [REDACTED]

[REDACTED] However, the petitioner has neither established that it and the advertising organizations are similar and in the same industry. Furthermore, several of the vacancy announcements do not state that a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For instance, some announcements state a requirement of a bachelor's degree without further specification, or that a bachelor's degree in graphic design is *preferred*.⁶

On appeal, the petitioner acknowledges that "these organizations span a multitude of different industries," but asserts that these organizations should nevertheless be considered "similar organizations when producing similar types of materials." In other words, the petitioner asserts that these organizations should be considered "similar" to the petitioner because the graphic designers are performing similar duties as the proffered position. However, the petitioner's assertions are not persuasive. The plain language of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that "[t]he degree requirement is common to the industry *in parallel positions* among similar organizations (emphasis added)." That is, the petitioner must establish that the positions are parallel to the proffered position, i.e., that the graphic designers perform similar duties as the proffered position, in addition to also establishing that the advertising organizations are similar to and in the same industry as the petitioner. The petitioner has not done so here. In any event, we again observe that some of the vacancy announcements do not state that a bachelor's degree in a specific specialty, or its equivalent, is required for the positions.

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

⁵ When determining whether the petitioner and the advertising organizations share the same general characteristics, such factors may include the nature or type of organization, 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 without providing a legitimate basis for such an assertion.

⁶ A preference for a degree is not a requirement.

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates insufficient evidence to demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

The petitioner asserts that the proffered position is complex because "it requires extra computer skills beyond design: specifically, website development, keeping up-to-date on all new and emerging publishing technology, and ensuring operation of computer equipment and performing preventative maintenance." However, the job duties of website development and computer maintenance do not reasonably fall within the scope of duties for desktop publishers (nor, as discussed *supra*, are they consistent with the duties of graphic designers). With respect to the duty of "keeping up-to-date on all new and emerging publishing technology," the petitioner has not explained why this duty distinguishes the proffered position from other desktop publisher positions, especially considering the *Handbook's* statement that "[c]omputer skills, including knowledge of desktop publishing software, are important" to desktop publishers." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Desktop Publishers," <http://www.bls.gov/ooh/office-and-administrative-support/desktop-publishers.htm#tab-4> (last visited Apr. 15, 2015).

The petitioner also asserts that the proffered position is complex because "the in-depth cultural knowledge and language skills required to perform [graphics and calligraphy art] in Farsi and target the Iranian community in the United States make [it] highly specialized." While this aspect of the position may possibly make it more complex or unique than other desktop publisher positions, the petitioner has not explained how the required cultural knowledge and language skills can be performed only by a person with at least a bachelor's degree in Computer Graphic Design. Overall, the evidence of record is insufficient to establish to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁷

⁷ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation

With respect to this criterion, the petitioner stated that it "has not had a Computer Graphic Designer previously." 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 previously 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 it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

On appeal, the petitioner stated that the Director "entirely ignored petitioner's evidence regarding its prior practice of hiring 3 professionals who perform graphic designer duties and that they all had bachelor's degrees as well as its own attempts to advertise for the proffered position." However, the petitioner has never previously indicated that its three current and former employees performed graphic designer duties, and the petitioner has not resolved this apparent discrepancy.⁸ Moreover, the petitioner indicated that its three current and former employees have bachelor's degrees in science/journalism, business, and an otherwise unspecified bachelor of science degree. Their degrees in fields other than Computer Graphic Design undermine the petitioner's eligibility under this criterion. Further, the petitioner's own vacancy advertisement for the proffered position, which we note was not accompanied by evidence of actual publication, did not specify any educational requirement for the proffered position.

Accordingly, the evidence of record is insufficient to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. The record does not include sufficient consistent and probative evidence to establish that the position proffered here encompasses the performance of specialized and complex duties the nature of which requires knowledge usually associated with at least a bachelor's degree in a specific specialty. The evidence of record is insufficient to establish eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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").

⁸ The petitioner listed its three current and former employees as a senior editor "[i]n charge of Editing and modifying the ads," an associate editor "[i]n charge of Editing the Persian language on the ads," and a project manager in charge of "Art Director, Web Designer, and Marketing [*sic*]."

Accordingly, as the evidence of record is insufficient to satisfy 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. The appeal will be dismissed and the petition denied for this reason.

III. BENEFICIARY QUALIFICATIONS

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the evidence of record does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. As such, we will not address the beneficiary's qualifications further, except to note additional deficiencies with respect to the submitted evidence. More specifically, when the petitioner seeks to establish that the beneficiary is qualified to perform services in a specialty occupation under the regulation 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), it not only must establish that the beneficiary has the education, specialized training, and/or progressively responsible experience equivalent to a U.S. bachelor's or higher degree in the specialty occupation, but it must also establish that the beneficiary has "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty." Here, the letters from [REDACTED] and other relevant evidence do not address or establish whether the beneficiary has obtained "recognition of expertise in the specialty through progressively responsible positions" as required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

IV. CONCLUSION

The evidence of record fails to establish that the proffered position qualifies as a specialty occupation. 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.